

16A Am. Jur. 2d Constitutional Law § 607

American Jurisprudence, Second Edition | May 2021 Update

Constitutional Law

Barbara J. Van Arsdale, J.D.; James Buchwalter, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Lonnie E. Griffith, Jr., J.D.; Janice Holben, J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; Karen L. Schultz, J.D.; Jeffrey J. Shampo, J.D.; and Kimberly C. Simmons, J.D.

IX. Fundamental Constitutional Rights and Privileges

C. Particular Fundamental Constitutional Rights

2. Life, Liberty, and Pursuit of Happiness

a. In General

§ 607. Life, liberty, and pursuit of happiness as fundamental rights, generally; source of rights

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 1065 to 1079

The theory upon which the political institutions and social structure of America rests is that all persons have certain rights of life, liberty, and the pursuit of happiness, which are inalienable,¹ fundamental,² and inherent.³ This principle was, of course, expressly stated in the Declaration of Independence.⁴ Personal liberty is a fundamental right.⁵ The constitutional guarantee of liberty implies the existence of an organized society maintaining public order, without which liberty itself would be lost in the excesses of anarchy.⁶ Its protection extends equally to children as well as to adults.⁷

The U.S. Constitution is a charter of negative rather than positive liberties.⁸ It provides that neither Congress⁹ nor the states¹⁰ may deprive any person of life, liberty, or property without due process of law,¹¹ and many of the state constitutions contain similar guarantees.¹²

Observation:

Where a state creates liberty interests broader than those protected directly by the Federal Constitution, those procedures mandated to protect federal substantive interests might fail to determine the actual procedural rights and duties of persons within that state.¹³

For purposes of a substantive due process analysis under the federal [U.S. Const. Amends. V, XIV](#) concerning the validity of an alleged impairment of a liberty interest, narrow tailoring is required only where fundamental rights are involved; the impairment of a lesser interest demands no more than a reasonable fit between the governmental purpose and the means chosen to advance that purpose.¹⁴

All fundamental rights comprised within the term liberty are protected by the Federal Constitution from invasion by the states.¹⁵ A person's liberty also is protected by the Due Process Clause, even when the liberty itself is a statutory creation of a state.¹⁶ Thus, a liberty interest protected by the 14th Amendment's Due Process Clause may arise from the Constitution itself by reason of guarantees implicit in the word "liberty," or it may arise from an expectation or interest created by state laws or policies.¹⁷ Additionally, in the absence of special legislation, Native Americans, like other citizens, are embraced by the protection against an unwarranted intrusion on personal liberty.¹⁸

The test to measure the validity of a state statute under the Due Process Clause of the 14th Amendment is whether the statute is contrary to the fundamental principles of liberty and justice.¹⁹ Application of the broad restraints of due process compels inquiry into the nature of the demand being made upon individual freedom in a particular context and the justification of social need on which the demand rests.²⁰ The Due Process Clause generally confers no affirmative right to governmental aid, even where such aid may be necessary to secure life, liberty, or property interests of which the government itself may not deprive an individual.²¹

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Meachum v. Fano](#), 427 U.S. 215, 96 S. Ct. 2532, 49 L. Ed. 2d 451 (1976) (holding that a "liberty interest" may have either of two sources: it may originate in the U.S. Constitution or it may have its roots in state law).
- 2 [In re Roger S.](#), 19 Cal. 3d 921, 141 Cal. Rptr. 298, 569 P.2d 1286 (1977); [Shavers v. Duval County](#), 73 So. 2d 684 (Fla. 1954).
- 3 [Thiede v. Town of Scandia Valley](#), 217 Minn. 218, 14 N.W.2d 400 (1944).
- 4 "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty, and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed."
- 5 [People v. Applin](#), 40 Cal. App. 4th 404, 46 Cal. Rptr. 2d 862 (5th Dist. 1995).
The right to personal security constitutes historic liberty interest protected substantively by the due process clause. [Johnson ex rel. Cano v. Homes](#), 377 F. Supp. 2d 1039 (D.N.M. 2004), *aff'd*, 455 F.3d 1133 (10th Cir. 2006).
- 6 [Startzell v. City of Philadelphia, Pennsylvania](#), 533 F.3d 183 (3d Cir. 2008).
- 7 [In Interest of S.H.](#), 204 Ga. App. 135, 418 S.E.2d 454 (1992).
- 8 [Rogers v. City of Port Huron](#), 833 F. Supp. 1212 (E.D. Mich. 1993).
- 9 [U.S. Const. Amend. V](#).
- 10 [U.S. Const. Amend. XIV](#).
The interests comprehended within the meaning of "liberty" (or "property") under the procedural guarantees of the Due Process Clause of the 14th Amendment include interests that are recognized and protected by state law as well as interests guaranteed in one of the provisions of the Bill of Rights which have been

"incorporated" into the 14th Amendment. [Paul v. Davis](#), 424 U.S. 693, 96 S. Ct. 1155, 47 L. Ed. 2d 405 (1976).

§§ 933 to 937, discussing due process, generally.

[Ex parte Guthrie](#), 689 So. 2d 951 (Ala. 1997) (noting, however, that the imposition and affirmance of the defendant's death sentence for capital murder did not violate the right to life proclaimed in the Alabama Constitution; the provision in question does not prohibit the state from establishing that certain criminal acts are so heinous as to warrant forfeiture of a convicted defendant's life).

[Mills v. Rogers](#), 457 U.S. 291, 102 S. Ct. 2442, 73 L. Ed. 2d 16 (1982).

[Reno v. Flores](#), 507 U.S. 292, 113 S. Ct. 1439, 123 L. Ed. 2d 1 (1993).

[Kitchen v. Herbert](#), 755 F.3d 1193 (10th Cir. 2014).

[Wolff v. McDonnell](#), 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974).

[Wilkinson v. Austin](#), 545 U.S. 209, 125 S. Ct. 2384, 162 L. Ed. 2d 174 (2005); [Kretchmar v. Federal Bureau of Investigation](#), 32 F. Supp. 3d 49 (D.D.C. 2014), *aff'd*, (D.C. Circ. 14-5178) (Jan. 16, 2015).

[Duro v. Reina](#), 495 U.S. 676, 110 S. Ct. 2053, 109 L. Ed. 2d 693 (1990).

[Petition of Groban](#), 352 U.S. 330, 77 S. Ct. 510, 1 L. Ed. 2d 376, 76 Ohio L. Abs. 368 (1957); [Cummings v. X-Ray Associates of New Mexico, P.C.](#), 1996-NMSC-035, 121 N.M. 821, 918 P.2d 1321 (1996).

[Frank v. State of Md.](#), 359 U.S. 360, 79 S. Ct. 804, 3 L. Ed. 2d 877 (1959) (overruled in part on other grounds by, [Camara v. Municipal Court of City and County of San Francisco](#), 387 U.S. 523, 87 S. Ct. 1727, 18 L. Ed. 2d 930 (1967)).

[Johnson ex rel. Cano v. Homes](#), 377 F. Supp. 2d 1039 (D.N.M. 2004), *aff'd*, 455 F.3d 1133 (10th Cir. 2006).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16A Am. Jur. 2d Constitutional Law § 608

American Jurisprudence, Second Edition | May 2021 Update

Constitutional Law

Barbara J. Van Arsdale, J.D.; James Buchwalter, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Lonnie E. Griffith, Jr., J.D.; Janice Holben, J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; Karen L. Schultz, J.D.; Jeffrey J. Shampo, J.D.; and Kimberly C. Simmons, J.D.

IX. Fundamental Constitutional Rights and Privileges

C. Particular Fundamental Constitutional Rights

2. Life, Liberty, and Pursuit of Happiness

a. In General

§ 608. Construction and definition of terms "life, liberty, and property," as used in State and Federal Constitutions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1065, 1079, 1082

The words "life, liberty, and property," as used in State and Federal Constitutions, are representative terms and are intended to cover every right to which a member of the body politic is entitled under the law;¹ in short, all that makes life worth living² or all the rights consistent with public safety.³ The liberty thus guaranteed is a very broad and extensive concept.⁴ Judicial interpretation has given the word "liberty," as so used, its most comprehensive signification; it embraces every form and phase of individual right that is not necessarily taken away by some valid law for the common good.⁵ The guarantee of due process protects the liberty of the individual.⁶ The cardinal precept upon which the constitutional safeguards of personal liberty ultimately rest is that a government should be one of laws,⁷ and that all persons are equal before the law.⁸

Although the liberty protected by the [U.S. Const. Amend. XIV](#) consists mainly of the vital rights of a citizen as asserted at common law when the Constitution was adopted,⁹ it is settled that the "liberty" safeguarded by the Due Process Clause includes protection from violation for any of the fundamental conceptions of justice which lie at the base of our civil and political institutions¹⁰ and includes such actions as the freedom to loiter for innocent purposes.¹¹ This concept of liberty contained in the 14th Amendment is constantly enveloping the protection of more and more fundamental rights.¹² As stated by the Supreme Court at various times, it has not attempted to define with exactness the liberty guaranteed by the Due Process Clause of the 14th Amendment.¹³ There exists a variety of interests which are difficult of definition but are nevertheless comprehended within the

meaning of "liberty," as the term is used in the Due Process Clause.¹⁴ "Liberty," the Supreme Court has said, "is a 'broad and majestic' term,¹⁵ purposely left to gather meaning from experience."¹⁶ To determine whether a restriction on liberty constitutes an impermissible punishment or permissible regulation, the Supreme Court first looks to legislative intent.¹⁷

Observation:

The existence of a liberty or property interest requiring due process protection depends on the construction of the relevant statutes, and the nature of the interest at stake.¹⁸

The "pursuit of happiness" has been interpreted as the right to follow or pursue any occupation or profession without restriction and without having any burden imposed upon one that is not imposed upon others in a similar situation.¹⁹

"Pursuit of happiness" also encompasses the freedom of contract.²⁰ However, the Federal Constitution and its amendments do not guarantee a generalized right to the pursuit of happiness.²¹

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 Gillespie v. People, 188 Ill. 176, 58 N.E. 1007 (1900); McKinsterv. Sager, 163 Ind. 671, 72 N.E. 854 (1904); Lawrence E. Tierney Coal Co. v. Smith's Guardian, 180 Ky. 815, 203 S.W. 731, 4 A.L.R. 1540 (1918), modified on other grounds, 181 Ky. 764, 205 S.W. 951 (1918); In re Flukes, 157 Mo. 125, 57 S.W. 545 (1900).
- 2 In re Flukes, 157 Mo. 125, 57 S.W. 545 (1900).
- 3 State v. Gravett, 65 Ohio St. 289, 62 N.E. 325 (1901).
However, a state constitutional provision which guarantees the right to life and liberty, the right to acquire and possess property, and the right to pursue and obtain safety and happiness does not impose upon the state government an affirmative obligation to finance housing for homeless persons. L.T. v. New Jersey Dept. of Human Services, Div. of Family Development, 264 N.J. Super. 334, 624 A.2d 990 (App. Div. 1993), decision rev'd on other grounds, 134 N.J. 304, 633 A.2d 964 (1993).
- 4 Board of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972) (holding that in a constitution for a free people, there can be no doubt that the meaning of "liberty" must be broad indeed).
- 5 Meyer v. Nebraska, 262 U.S. 390, 43 S. Ct. 625, 67 L. Ed. 1042, 29 A.L.R. 1446 (1923); Ex parte Drexel, 147 Cal. 763, 82 P. 429 (1905); Wright v. Hart, 182 N.Y. 330, 75 N.E. 404 (1905) (overruled in part on other grounds by, Klein v. Marvelas, 219 N.Y. 383, 114 N.E. 809 (1916)).
- 6 Gilmer v. State, 389 Md. 656, 887 A.2d 549 (2005).
- 7 Jones v. Securities and Exchange Commission, 298 U.S. 1, 56 S. Ct. 654, 80 L. Ed. 1015 (1936).
- 8 Cummings v. Missouri, 71 U.S. 277, 18 L. Ed. 356, 1866 WL 9452 (1866).
- 9 Sinclair v. State, 161 Miss. 142, 132 So. 581, 74 A.L.R. 241 (1931).
- 10 Mooney v. Holohan, 294 U.S. 103, 55 S. Ct. 340, 79 L. Ed. 791, 98 A.L.R. 406 (1935).
- 11 City of Chicago v. Morales, 527 U.S. 41, 119 S. Ct. 1849, 144 L. Ed. 2d 67, 72 A.L.R.5th 665 (1999).

12 §§ 612 to 627, discussing particular matters embraced in the concept of liberty.
13 Board of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972); Bolling
v. Sharpe, 347 U.S. 497, 74 S. Ct. 693, 98 L. Ed. 884 (1954), opinion supplemented on other grounds, 349
U.S. 294, 75 S. Ct. 753, 99 L. Ed. 1083, 71 Ohio L. Abs. 584 (1955).
14 Paul v. Davis, 424 U.S. 693, 96 S. Ct. 1155, 47 L. Ed. 2d 405 (1976).
15 Board of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972).
16 National Mut. Ins. Co. of Dist. of Col. v. Tidewater Transfer Co., 337 U.S. 582, 69 S. Ct. 1173, 93 L. Ed.
1556 (1949).
17 U.S. v. Salerno, 481 U.S. 739, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987).
18 Guzman v. Piercy, 155 Idaho 928, 318 P.3d 918 (2014).
19 Allgeyer v. State of La., 165 U.S. 578, 17 S. Ct. 427, 41 L. Ed. 832 (1897); Myers v. City of Defiance, 67
Ohio App. 159, 21 Ohio Op. 165, 31 Ohio L. Abs. 636, 36 N.E.2d 162 (3d Dist. Defiance County 1940).
As to the right to pursue a business or occupation, generally, see § 616.
20 § 640.
21 Coffey v. U.S., 939 F. Supp. 185, 19 A.D.D. 528 (E.D. N.Y. 1996).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government
Works.

16A Am. Jur. 2d Constitutional Law § 609

American Jurisprudence, Second Edition | May 2021 Update

Constitutional Law

Barbara J. Van Arsdale, J.D.; James Buchwalter, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Lonnie E. Griffith, Jr., J.D.; Janice Holben, J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; Karen L. Schultz, J.D.; Jeffrey J. Shampo, J.D.; and Kimberly C. Simmons, J.D.

IX. Fundamental Constitutional Rights and Privileges

C. Particular Fundamental Constitutional Rights

2. Life, Liberty, and Pursuit of Happiness

a. In General

§ 609. Elements of term "liberty," as used in Due Process Clauses of State and Federal Constitutions, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1065 to 1079

The elements of the term "liberty," as used in the Due Process Clauses of State and Federal Constitutions, have been summarized by the courts in varying language. Thus, liberty consists partially of the right to be free from arbitrary personal restraints or servitude.¹ In this sense it consists largely of freedom from arbitrary physical restraint.² Among the historic liberties protected by the Due Process Clauses of the Fifth and 14th Amendments is the right to be free from and to obtain judicial relief for unjustified intrusions on personal security.³ Under the 14th Amendment's protection of liberty interests, it is fundamental that a state cannot hold and physically punish an individual except in accordance with due process of law.⁴

However, it is well settled that the "liberty" protected by the Due Process Clauses does not merely denote an individual's freedom from physical or bodily restraint.⁵ It includes liberty of the mind as well as liberty of action.⁶ In addition to the specific freedoms protected by the Bill of Rights, the liberty specially protected by the Due Process Clause includes the rights to marry, to have children, to direct the education and upbringing of one's children, to marital privacy, to use contraception, to bodily integrity, and to abortion.⁷ The liberty mentioned in the Due Process Clause of the 14th Amendment means also the right of the citizen: to be free in the enjoyment of all his or her faculties; to be free to use them in all lawful ways; to live and work where he or she will; to earn his or her livelihood by any lawful calling; and to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary, and essential to his or her carrying out to a successful conclusion the

purposes above mentioned.⁸ Similarly, "liberty," as guaranteed in the Due Process Clause of the Fifth and 14th Amendments, denotes the right of the individual to contract; to engage in any of the common occupations of life; to acquire useful knowledge; to marry, establish a home, and bring up children; to worship God according to the dictates of his or her own conscience; and generally to enjoy those privileges long recognized at common law as being essential to the orderly pursuit of happiness by free people.⁹ In short, liberty under law extends to the full range of conduct which the individual is free to pursue and which cannot be restricted except for a proper governmental objective.¹⁰ The right to a fair trial in a criminal case has been held to be a fundamental liberty secured by the 14th Amendment.¹¹ On the other hand, the liberty guaranteed by the Due Process Clause of the 14th Amendment does not include among its incidents a vested right of an individual to have the rules of law remain unchanged for his or her benefit.¹²

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Smith v. State of Texas](#), 233 U.S. 630, 34 S. Ct. 681, 58 L. Ed. 1129 (1914).
- 2 [In re Roger S.](#), 19 Cal. 3d 921, 141 Cal. Rptr. 298, 569 P.2d 1286 (1977); [Moyers v. City of Memphis](#), 135 Tenn. 263, 186 S.W. 105 (1916); [Ex parte Hudgins](#), 86 W. Va. 526, 103 S.E. 327, 9 A.L.R. 1361 (1920).
As to whether physical restraint violates due process in particular situations, see § 612.
- 3 [Ingraham v. Wright](#), 430 U.S. 651, 97 S. Ct. 1401, 51 L. Ed. 2d 711 (1977).
- 4 [Ingraham v. Wright](#), 430 U.S. 651, 97 S. Ct. 1401, 51 L. Ed. 2d 711 (1977).
- 5 [Board of Regents of State Colleges v. Roth](#), 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972); [Grosjean v. American Press Co.](#), 297 U.S. 233, 56 S. Ct. 444, 80 L. Ed. 660 (1936).
- 6 [Palko v. State of Connecticut](#), 302 U.S. 319, 58 S. Ct. 149, 82 L. Ed. 288 (1937) (overruled on other grounds by, [Benton v. Maryland](#), 395 U.S. 784, 89 S. Ct. 2056, 23 L. Ed. 2d 707 (1969)).
- 7 [Dawn D. v. Superior Court \(Jerry K.\)](#), 17 Cal. 4th 932, 72 Cal. Rptr. 2d 871, 952 P.2d 1139 (1998).
School children have a liberty interest in their bodily integrity protected by Due Process Clause of the Fourteenth Amendment, and physical sexual abuse by a school employee violates this right. [A.W. v. Humble Independent School Dist.](#), 25 F. Supp. 3d 973, 311 Ed. Law Rep. 685 (S.D. Tex. 2014), *aff'd*, 803 F.3d 754, 323 Ed. Law Rep. 19 (5th Cir. 2015).
Parental authority over decisions involving their minor children derives from the liberty interest contained in the U.S. Const. Amend. XIV and the guarantee of privacy in the Florida Constitution. [Global Travel Marketing, Inc. v. Shea](#), 908 So. 2d 392 (Fla. 2005).
- 8 [Grosjean v. American Press Co.](#), 297 U.S. 233, 56 S. Ct. 444, 80 L. Ed. 660 (1936); [City of Mt. Vernon v. Julian](#), 369 Ill. 447, 17 N.E.2d 52, 119 A.L.R. 747 (1938); [State v. Ballance](#), 229 N.C. 764, 51 S.E.2d 731, 7 A.L.R.2d 407 (1949); [Moore v. Sutton](#), 185 Va. 481, 39 S.E.2d 348 (1946).
- 9 [Board of Regents of State Colleges v. Roth](#), 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972); [Sinquefeld v. Valentine](#), 159 Miss. 144, 132 So. 81, 76 A.L.R. 238 (1931); [State v. Williams](#), 253 N.C. 337, 117 S.E.2d 444, 92 A.L.R.2d 513 (1960).
- 10 [Bolling v. Sharpe](#), 347 U.S. 497, 74 S. Ct. 693, 98 L. Ed. 884 (1954), *opinion supplemented*, 349 U.S. 294, 75 S. Ct. 753, 99 L. Ed. 1083, 71 Ohio L. Abs. 584 (1955).
The word "liberty" as used in the Virginia Constitution means more than freedom from restraint and more than merely the right to go where one chooses; it means the right to do such acts as one may judge best for his or her interests, not inconsistent with the equal rights of others. [Moore v. Sutton](#), 185 Va. 481, 39 S.E.2d 348 (1946).
- 11 [Estelle v. Williams](#), 425 U.S. 501, 96 S. Ct. 1691, 48 L. Ed. 2d 126 (1976).
As to the right of an accused to a fair trial, generally, see [Am. Jur. 2d, Criminal Law](#) §§ 908 to 925.
- 12 [Middleton v. Texas Power & Light Co.](#), 249 U.S. 152, 39 S. Ct. 227, 63 L. Ed. 527 (1919).

16A Am. Jur. 2d Constitutional Law § 610

American Jurisprudence, Second Edition | May 2021 Update

Constitutional Law

Barbara J. Van Arsdale, J.D.; James Buchwalter, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Lonnie E. Griffith, Jr., J.D.; Janice Holben, J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; Karen L. Schultz, J.D.; Jeffrey J. Shampo, J.D.; and Kimberly C. Simmons, J.D.

IX. Fundamental Constitutional Rights and Privileges

C. Particular Fundamental Constitutional Rights

2. Life, Liberty, and Pursuit of Happiness

a. In General

§ 610. Limitations on constitutional guarantee of liberty

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 1079

An individual's strong interest in liberty may, in circumstances in which the government's interest is sufficiently weighty, be subordinated to the greater needs of society.¹ Thus, in spite of the broad scope of the fundamental right of liberty and the jealous protection by the Constitution of the rights of the individual,² liberty is not a right which is uncontrollable³ or which is absolute under all circumstances and conditions.⁴ The constitutional guarantee of liberty implies the existence of an organized society maintaining public order, without which liberty itself would be lost in the excesses of anarchy.⁵ So that when one becomes a member of society, he or she necessarily parts with some privileges which, as an individual not affected by his or her relations to others, he or she might retain.⁶ Society based on the rule that each one is a law unto himself or herself would soon be confronted with disorder and anarchy;⁷ the liberty of one individual must necessarily be subject to the same right in all others.⁸ Hence, liberty does not signify unrestrained license to follow the dictates of an unbridled will.⁹ One who is prevented from injuring another cannot justly assert that he or she has himself or herself been deprived of any right.¹⁰ Liberty implies the absence of arbitrary restraint,¹¹ and not immunity from reasonable regulations and prohibitions imposed in the interests of the community.¹²

Every person has a fundamental right to liberty in the sense that the government may not punish him or her unless and until it proves his or her guilt beyond a reasonable doubt at a criminal trial conducted in accordance with relevant constitutional guarantees; however, a person who has been so convicted is eligible for, and a court may impose, whatever punishment is authorized by statute for his or her offense, so long as that penalty is not cruel and unusual and so long as the penalty is not

based on some arbitrary distinction that would violate the Due Process Clause of the Fifth Amendment.¹³ Thus, despite the fundamental nature of the right to travel, for instance, there are situations in which a state may prevent a citizen from leaving, such as when a person has been convicted of a crime within the state, he or she may be detained within that state, and returned to it if he or she is found in another state.¹⁴ Alternatively, the state may force an individual who has been extradited to leave the state.¹⁵ A mentally retarded person does not have a constitutional guarantee of a right to live in the community of his or her choice or in the least restrictive environment.¹⁶ Also, the imposition and affirmance of a defendant's death sentence for capital murder do not violate the right to life proclaimed in a state constitution, since the provision in question does not prohibit the state from establishing that certain criminal acts are so heinous as to warrant forfeiture of a convicted defendant's life.¹⁷ Individuals may be deprived of life or liberty as punishment for crime¹⁸ or because their mental state makes them dangerous to society.¹⁹

Observation:

The state does not have a constitutional duty to protect its citizens from private violence.²⁰ Similarly, there is no positive entitlement to fire protection.²¹ However, while there is also no general constitutional right to police protection, the police may not discriminate in providing such protection.²²

Although liberty is subject to governmental regulation, it must be clearly understood that where there is a significant encroachment upon personal liberty, the state may prevail only upon showing a subordinating interest which is compelling.²³ the liberty protected by the Due Process Clause cannot be restricted except for a proper governmental purpose.²⁴ The liberty protected by the Due Process Clause of the 14th Amendment may not be interfered with under the guise of protecting the public interest by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect.²⁵ Moreover, the Supreme Court has ruled that even though a governmental purpose is legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.²⁶ The Supreme Court has also held that under the 14th Amendment, a state, even when pursuing a legitimate interest, may not choose means that unnecessarily restrict constitutionally protected liberty;²⁷ the breadth of legislative abridgment must be viewed in the light of less drastic means for achieving the same basic purpose.²⁸ This rule has been particularly applied in cases in which the liberties guaranteed by the [U.S. Const. Amend. I](#) were in issue.²⁹

CUMULATIVE SUPPLEMENT

Cases:

Constitutional rights may not be denied simply because of hostility to their assertion or exercise; however, when clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears, the power of the state to prevent or punish is obvious. [O'Connell v. City of New Bern, North Carolina](#), 447 F. Supp. 3d 466 (E.D. N.C. 2020).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 U.S. v. Salerno, 481 U.S. 739, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987).
- 2 State v. Brown, 37 Wash. 97, 79 P. 635 (1905) (overruled in part on other grounds by, State v. Boren, 36 Wash. 2d 522, 219 P.2d 566, 20 A.L.R.2d 798 (1950)).
- 3 Virginian Ry. Co. v. System Federation No. 40, 300 U.S. 515, 57 S. Ct. 592, 81 L. Ed. 789 (1937); West Coast Hotel Co. v. Parrish, 300 U.S. 379, 57 S. Ct. 578, 81 L. Ed. 703, 108 A.L.R. 1330 (1937).
The fact that a liberty cannot be inhibited without due process of law does not mean that it can under no circumstances be inhibited. Zemel v. Rusk, 381 U.S. 1, 85 S. Ct. 1271, 14 L. Ed. 2d 179 (1965).
- 4 West Coast Hotel Co. v. Parrish, 300 U.S. 379, 57 S. Ct. 578, 81 L. Ed. 703, 108 A.L.R. 1330 (1937); Weems v. Little Rock Police Dept., 453 F.3d 1010 (8th Cir. 2006).
- 5 Startzell v. City of Philadelphia, Pennsylvania, 533 F.3d 183 (3d Cir. 2008).
- 6 Munn v. People of State of Illinois, 94 U.S. 113, 24 L. Ed. 77, 1876 WL 19615 (1876); Shavers v. Duval County, 73 So. 2d 684 (Fla. 1954).
- 7 Jacobson v. Commonwealth of Massachusetts, 197 U.S. 11, 25 S. Ct. 358, 49 L. Ed. 643 (1905); Shavers v. Duval County, 73 So. 2d 684 (Fla. 1954); State v. Durein, 70 Kan. 1, 78 P. 152 (1904), on reh'g, 70 Kan. 13, 80 P. 987 (1905) and aff'd, 208 U.S. 613, 28 S. Ct. 567, 52 L. Ed. 645 (1908).
The freedom to exercise civil liberties was never intended as the license to anyone to take the law in his or her own hands and to defy public authority. Hord v. City of Fort Myers, 153 Fla. 99, 13 So. 2d 809 (1943).
- 8 Shavers v. Duval County, 73 So. 2d 684 (Fla. 1954); Auburn Draying Co. v. Wardell, 227 N.Y. 1, 124 N.E. 97, 6 A.L.R. 901 (1919).
- 9 Virginian Ry. Co. v. System Federation No. 40, 300 U.S. 515, 57 S. Ct. 592, 81 L. Ed. 789 (1937); People v. Wickliff, 144 Cal. App. 2d 207, 300 P.2d 749 (2d Dist. 1956); Shavers v. Duval County, 73 So. 2d 684 (Fla. 1954); Fawick Airflex Co. v. United Elec., Radio & Mach. Workers Local No. 735, 60 Ohio L. Abs. 451, 101 N.E.2d 797 (Ct. App. 8th Dist. Cuyahoga County 1950).
- 10 Shavers v. Duval County, 73 So. 2d 684 (Fla. 1954).
- 11 National City Bank of New York v. Del Sordo, 16 N.J. 530, 109 A.2d 631 (1954).
- 12 West Coast Hotel Co. v. Parrish, 300 U.S. 379, 57 S. Ct. 578, 81 L. Ed. 703, 108 A.L.R. 1330 (1937); Hardware Dealers' Mut. Fire Ins. Co. of Wis. v. Glidden Co., 284 U.S. 151, 52 S. Ct. 69, 76 L. Ed. 214 (1931); State v. Old Tavern Farm, 133 Me. 468, 180 A. 473, 101 A.L.R. 810 (1935); People v. Feiner, 300 N.Y. 391, 91 N.E.2d 316 (1950), aff'd, 340 U.S. 315, 71 S. Ct. 303, 95 L. Ed. 295 (1951).
As to liberty and the police power, see §§ 344 to 399.
- 13 Chapman v. U.S., 500 U.S. 453, 111 S. Ct. 1919, 114 L. Ed. 2d 524 (1991).
The Social Compact Clause of the Connecticut Constitution does not confer a natural right to life that the legislature, operating under appropriate constitutional constraints regarding death penalty legislation, cannot take away. State v. Webb, 238 Conn. 389, 680 A.2d 147 (1996).
A mandatory sentence provision for certain crimes does not involve an unconstitutional deprivation of a defendant's fundamental right to liberty. Com. v. Gautieri, 431 Pa. Super. 412, 636 A.2d 1153 (1994).
- 14 Jones v. Helms, 452 U.S. 412, 101 S. Ct. 2434, 69 L. Ed. 2d 118 (1981).
- 15 People v. Young, 153 Ill. 2d 383, 180 Ill. Dec. 229, 607 N.E.2d 123 (1992) (holding that the only constitutional right involved in extradition is that of personal liberty, as the purpose is only to return a fugitive to the demanding state).
- 16 P.C. v. McLaughlin, 913 F.2d 1033, 62 Ed. Law Rep. 881 (2d Cir. 1990).
- 17 Ex parte Guthrie, 689 So. 2d 951 (Ala. 1997).
- 18 Mack v. State, 203 Ind. 355, 180 N.E. 279, 83 A.L.R. 1349 (1932).
- 19 In re Martens, 269 Ill. App. 3d 324, 206 Ill. Dec. 895, 646 N.E.2d 27 (2d Dist. 1995) (holding, however, that because involuntary commitment proceedings invade a patient's liberty interest, the statutes regarding involuntary commitment proceedings should be construed strictly in favor of the patient).

- Commitment to mental health institutions may deprive inmates of their constitutionally protected liberty interests. *Rhyne v. Henderson County*, 973 F.2d 386 (5th Cir. 1992).
- 20 *Soto v. Flores*, 103 F.3d 1056 (1st Cir. 1997); *Bright v. Westmoreland County*, 443 F.3d 276 (3d Cir. 2006); *Van Ort v. Estate of Stanewich*, 92 F.3d 831 (9th Cir. 1996).
- Nothing in the language of the Due Process Clause of the 14th Amendment requires a state to protect the life, liberty, and property of its citizens against invasion by private actors; a state's failure to protect an individual against private violence does not constitute a violation of the Due Process Clause; although the liberty protected under the federal guarantee of due process affords protection against unwarranted government interference, it does not confer an entitlement to such governmental aid as may be necessary to realize all the advantages of that freedom. *DeShaney v. Winnebago County Dept. of Social Services*, 489 U.S. 189, 109 S. Ct. 998, 103 L. Ed. 2d 249 (1989).
- 21 *Pierce v. Village of Divernon, Ill.*, 17 F.3d 1074 (7th Cir. 1994).
- 22 *Smith v. Gilpin County, Colo.*, 949 F. Supp. 1498 (D. Colo. 1996); *Rogers v. City of Port Huron*, 833 F. Supp. 1212 (E.D. Mich. 1993).
- 23 *Bates v. City of Little Rock*, 361 U.S. 516, 80 S. Ct. 412, 4 L. Ed. 2d 480 (1960).
- Once constitutionally protected personal liberty is established, a contravailing state interest restricting liberty must be self-evident or be affirmatively established by the state. *Richards v. Thurston*, 424 F.2d 1281 (1st Cir. 1970).
- 24 *Bolling v. Sharpe*, 347 U.S. 497, 74 S. Ct. 693, 98 L. Ed. 884 (1954), opinion supplemented on other grounds, 349 U.S. 294, 75 S. Ct. 753, 99 L. Ed. 1083, 71 Ohio L. Abs. 584 (1955).
- 25 *Meyer v. Nebraska*, 262 U.S. 390, 43 S. Ct. 625, 67 L. Ed. 1042, 29 A.L.R. 1446 (1923).
- 26 *Kusper v. Pontikes*, 414 U.S. 51, 94 S. Ct. 303, 38 L. Ed. 2d 260 (1973); *Police Dept. of City of Chicago v. Mosley*, 408 U.S. 92, 92 S. Ct. 2286, 33 L. Ed. 2d 212 (1972); *Keyishian v. Board of Regents of University of State of N. Y.*, 385 U.S. 589, 87 S. Ct. 675, 17 L. Ed. 2d 629 (1967); *Elfbrandt v. Russell*, 384 U.S. 11, 86 S. Ct. 1238, 16 L. Ed. 2d 321 (1966); *Aptheker v. Secretary of State*, 378 U.S. 500, 84 S. Ct. 1659, 12 L. Ed. 2d 992 (1964).
- Statutes affecting constitutional rights must be drawn with precision and must be tailored to serve their legitimate objectives; if there are other reasonable ways to achieve those goals with a lesser burden on constitutionally protected activity, a state must not choose the way of greater interference but must choose the less drastic means. *Dunn v. Blumstein*, 405 U.S. 330, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972).
- 27 *Kusper v. Pontikes*, 414 U.S. 51, 94 S. Ct. 303, 38 L. Ed. 2d 260 (1973); *Police Dept. of City of Chicago v. Mosley*, 408 U.S. 92, 92 S. Ct. 2286, 33 L. Ed. 2d 212 (1972); *Shelton v. Tucker*, 364 U.S. 479, 81 S. Ct. 247, 5 L. Ed. 2d 231 (1960).
- A clear and precise enactment may nevertheless be "overbroad" if in its reach it prohibits constitutionally protected conduct. *Grayned v. City of Rockford*, 408 U.S. 104, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972).
- 28 *Wooley v. Maynard*, 430 U.S. 705, 97 S. Ct. 1428, 51 L. Ed. 2d 752 (1977); *Aptheker v. Secretary of State*, 378 U.S. 500, 84 S. Ct. 1659, 12 L. Ed. 2d 992 (1964); *Shelton v. Tucker*, 364 U.S. 479, 81 S. Ct. 247, 5 L. Ed. 2d 231 (1960).
- 29 §§ 421 to 423, discussing, generally, the overbreadth of legislation affecting First Amendment rights.

16A Am. Jur. 2d Constitutional Law § 611

American Jurisprudence, Second Edition | May 2021 Update

Constitutional Law

Barbara J. Van Arsdale, J.D.; James Buchwalter, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Lonnie E. Griffith, Jr., J.D.; Janice Holben, J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; Karen L. Schultz, J.D.; Jeffrey J. Shampo, J.D.; and Kimberly C. Simmons, J.D.

IX. Fundamental Constitutional Rights and Privileges

C. Particular Fundamental Constitutional Rights

2. Life, Liberty, and Pursuit of Happiness

a. In General

§ 611. Applicability of constitutional guarantee of liberty to artificial persons

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3927

So far as property rights are concerned, a corporation is, generally, a person within the meaning of the Due Process Clause of the Fifth and 14th Amendments,¹ but it is equally well settled that the liberty guaranteed against deprivation without due process of law is a liberty of natural and not artificial persons.² Under this rule, the Supreme Court has recognized that corporations cannot claim for themselves the liberty which the 14th Amendment guarantees.³ However, it appears as a matter of fact from many of the cases that this rule has not been applied by the court to issues concerning liberty of contract, apparently because this liberty is ordinarily exercised by an artificial person in the use and management of its property.⁴ Additionally, a corporate government contractor may assert a claim against a state official alleging the deprivation of a reputation-plus type of liberty interest.⁵

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [Am. Jur. 2d, Corporations § 66.](#)
- ² [Western Turf Ass'n v. Greenberg](#), 204 U.S. 359, 27 S. Ct. 384, 51 L. Ed. 520 (1907); [Northwestern Nat. Life Ins. Co. v. Riggs](#), 203 U.S. 243, 27 S. Ct. 126, 51 L. Ed. 168 (1906).
City property owners were not individuals, as required to support a due process claim for violation of the right to bodily integrity pursuant to [42 U.S.C.A. § 1983](#) against various defendants, including state and city

government officials, in consolidated class actions arising from injuries allegedly sustained as a result of the contamination of the city's water supply; property owners were businesses. [In re Flint Water Cases](#), 384 F. Supp. 3d 802 (E.D. Mich. 2019).

3 [Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary](#), 268 U.S. 510, 45 S. Ct. 571, 69 L. Ed. 1070, 39 A.L.R. 468 (1925).

4 § 615.

5 [Coleman & Williams, Ltd. v. Wisconsin Dept. of Workforce Development](#), 401 F. Supp. 2d 938 (E.D. Wis. 2005).

As to the protectible interest in reputation, generally, see § 621.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16A Am. Jur. 2d Constitutional Law § 612

American Jurisprudence, Second Edition | May 2021 Update

Constitutional Law

Barbara J. Van Arsdale, J.D.; James Buchwalter, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Lonnie E. Griffith, Jr., J.D.; Janice Holben, J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; Karen L. Schultz, J.D.; Jeffrey J. Shampo, J.D.; and Kimberly C. Simmons, J.D.

IX. Fundamental Constitutional Rights and Privileges

C. Particular Fundamental Constitutional Rights

2. Life, Liberty, and Pursuit of Happiness

b. Liberty Interest in Specific Matters

§ 612. Liberty interest of Due Process Clause in specific matters, generally; physical restraint

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1079, 1089

A.L.R. Library

[Right to relief under Federal Civil Rights Act of 1871 \(42 U.S.C.A. sec. 1983\) for alleged wrongful commitment to or confinement in mental hospital, 16 A.L.R. Fed. 440](#)

Physical restraint of an individual obviously deprives him or her of liberty.¹ The only question in this situation is whether such restraint violates due process of law. A mandatory sentence provision for sexual crimes against infants does not involve an unconstitutional deprivation of a defendant's fundamental right to liberty.² To determine whether the rights to liberty, privacy, and free movement have been violated, courts must balance those rights against society's right to protect itself; in carrying out this balancing, courts look to the reasonableness of the intrusion and permit brief investigatory stops based upon reasonable suspicion of criminal activity.³

Observation:

In the pretrial context, a defendant's liberty interest can implicate substantive as well as procedural rights; specifically, the proscription against punitive detention before trial may be implicated.⁴

Whether the confinement of a mentally ill person deprives him or her of liberty without due process depends upon the circumstances presented in each case.⁵ When an individual is confined in a state institution, individual liberties must be balanced against the interests of the institution in preventing the individual from harming himself or herself or others residing or working in the institution.⁶ However, where the government is required to take care of those who have already been deprived of their liberty, such as pretrial detainees, persons in mental institutions, convicted felons, and persons under arrest, the government's deliberate indifference to the care of those persons in its custody can shock the conscience for purposes of finding a substantive due process violation.⁷

Under some circumstances, the state may have a constitutional duty to care for those whom it has physically restrained, but that duty arises only when the state, by the affirmative exercise of its power, so restrains an individual's liberty that it renders him or her unable to care for himself or herself, and at the same time fails to provide for his or her basic human needs.⁸ Even when the state has a duty to provide substantive services for persons in its custody, it necessarily has considerable discretion in determining the nature and scope of its responsibilities; however, in any case, the state must satisfy the custodial individual's basic needs and constitutionally protected liberty interests.⁹

CUMULATIVE SUPPLEMENT

Cases:

The idea behind the special-relationship theory whereby state actors have affirmative duty of protection under due process clause is that when the State has so restrained the liberty of the individual that it renders him unable to care for himself, the State has a special relationship with the individual and thus an affirmative duty to protect him. [U.S. Const. Amend. 14](#). [Barefield v. Hillman](#), 475 F. Supp. 3d 794 (M.D. Tenn. 2020).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [§ 609](#).
- 2 [Com. v. Gautieri](#), 431 Pa. Super. 412, 636 A.2d 1153 (1994).
- 3 [Taylor v. State](#), 639 N.E.2d 1052 (Ind. Ct. App. 1994).
- 4 [U.S. v. Abuhamra](#), 389 F.3d 309 (2d Cir. 2004).

- 5 O'Connor v. Donaldson, 422 U.S. 563, 95 S. Ct. 2486, 45 L. Ed. 2d 396 (1975); In re Roger S., 19 Cal. 3d
921, 141 Cal. Rptr. 298, 569 P.2d 1286 (1977).
- 6 In re Calhoun, 121 Cal. App. 4th 1315, 18 Cal. Rptr. 3d 315 (2d Dist. 2004).
- 7 Slaughter v. Mayor and City Council of Baltimore, 682 F.3d 317 (4th Cir. 2012).
- 8 Burton v. Richmond, 370 F.3d 723 (8th Cir. 2004).
- 9 Del A. v. Roemer, 777 F. Supp. 1297 (E.D. La. 1991).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government
Works.

16A Am. Jur. 2d Constitutional Law § 613

American Jurisprudence, Second Edition | May 2021 Update

Constitutional Law

Barbara J. Van Arsdale, J.D.; James Buchwalter, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Lonnie E. Griffith, Jr., J.D.; Janice Holben, J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; Karen L. Schultz, J.D.; Jeffrey J. Shampo, J.D.; and Kimberly C. Simmons, J.D.

IX. Fundamental Constitutional Rights and Privileges

C. Particular Fundamental Constitutional Rights

2. Life, Liberty, and Pursuit of Happiness

b. Liberty Interest in Specific Matters

§ 613. First Amendment rights as within term "liberty" as protected by Due Process Clause

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1079 to 1082

The [U.S. Const. Amend. I](#) freedoms of speech and press,¹ religion,² and association³ are within the term "liberty" as protected by the Due Process Clause of the 14th Amendment against invasion by the states.

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [Smith v. People of the State of California](#), 361 U.S. 147, 80 S. Ct. 215, 4 L. Ed. 2d 205 (1959); [Staub v. City of Baxley](#), 355 U.S. 313, 78 S. Ct. 277, 2 L. Ed. 2d 302 (1958); [Joseph Burstyn, Inc. v. Wilson](#), 343 U.S. 495, 72 S. Ct. 777, 96 L. Ed. 1098 (1952); [Hughes v. Superior Court of Cal. in and for Contra Costa County](#), 339 U.S. 460, 70 S. Ct. 718, 94 L. Ed. 985, 57 Ohio L. Abs. 298 (1950) (liberty of thought and appropriate means for expressing it); [Taylor v. State of Mississippi](#), 319 U.S. 583, 63 S. Ct. 1200, 87 L. Ed. 1600 (1943). As to freedom of speech and of the press, generally, see §§ 458 to 553.
- ² [Board of Regents of State Colleges v. Roth](#), 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972); [School Dist. of Abington Tp., Pa. v. Schempp](#), 374 U.S. 203, 83 S. Ct. 1560, 10 L. Ed. 2d 844 (1963); [Cantwell v. State of Connecticut](#), 310 U.S. 296, 60 S. Ct. 900, 84 L. Ed. 1213, 128 A.L.R. 1352 (1940). As to freedom of religion, generally, see §§ 424 to 457.

- 3 [Gibson v. Florida Legislative Investigation Committee](#), 372 U.S. 539, 83 S. Ct. 889, 9 L. Ed. 2d 929 (1963);
 [National Ass'n for Advancement of Colored People v. State of Ala. ex rel. Patterson](#), 357 U.S. 449, 78 S.
 Ct. 1163, 2 L. Ed. 2d 1488 (1958).
 As to freedom of association, generally, see §§ [578](#) to [606](#).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government
Works.

16A Am. Jur. 2d Constitutional Law § 614

American Jurisprudence, Second Edition | May 2021 Update

Constitutional Law

Barbara J. Van Arsdale, J.D.; James Buchwalter, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Lonnie E. Griffith, Jr., J.D.; Janice Holben, J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; Karen L. Schultz, J.D.; Jeffrey J. Shampo, J.D.; and Kimberly C. Simmons, J.D.

IX. Fundamental Constitutional Rights and Privileges

C. Particular Fundamental Constitutional Rights

2. Life, Liberty, and Pursuit of Happiness

b. Liberty Interest in Specific Matters

§ 614. Right of privacy as implicit in concept of liberty guaranteed by Due Process Clause

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1093 to 1095, 1238 to 1248

A.L.R. Library

[Validity of state or local government regulation requiring private school to report attendance and similar information to government—post-Yoder cases, 8 A.L.R.5th 875](#)

Forms

Forms relating to right to privacy, see Am. Jur. Pleading and Practice Forms, Constitutional Law [\[Westlaw®\(r\) Search Query\]](#)

The right of privacy is implicit in the concept of liberty guaranteed by [U.S. Const. Amend. XIV, § 1](#).¹ Procreation, together with marriage and marital privacy, is a fundamental civil right protected by the Due Process and Equal Protection Clauses of the 14th Amendment.²

Observation:

Although the right to be let alone protects adults from government intrusion into matters relating to marriage, contraception, and abortion, the state may exercise control over the sexual conduct of children beyond the scope of its authority to control adults.³

The principles that embody the essence of constitutional liberty and security forbid all invasions, on the part of the government and its employees, of the sanctity of a person's home and the privacy of his or her life.⁴ Under this principle, homosexual persons' right to liberty under the Due Process Clause gives them a right to engage in consensual sexual activity in the confines of their home without intervention of the government.⁵

The security of one's privacy against arbitrary intrusion by the police is implicit in the concept of ordered liberty and, as such, enforceable against the states through the Due Process Clause of the 14th Amendment.⁶

The right to make decisions about medical treatments for oneself or one's children is a fundamental liberty and privacy right.⁷

Observation:

Patients' substantive 14th Amendment privacy interests in prescription records are limited to the right not to have the information disclosed to the general public.⁸

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Carey v. Population Services, Intern.](#), 431 U.S. 678, 97 S. Ct. 2010, 52 L. Ed. 2d 675 (1977); [Paris Adult Theatre I v. Slaton](#), 413 U.S. 49, 93 S. Ct. 2628, 37 L. Ed. 2d 446 (1973); [Roe v. Wade](#), 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973) (holding modified on other grounds by, [Planned Parenthood of Southeastern Pennsylvania v. Casey](#), 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992)).
- 2 As to the constitutional right to privacy, generally, see §§ 648 to 656.
- 3 [Matter of Johnson](#), 45 N.C. App. 649, 263 S.E.2d 805 (1980).

- 3 C.N. v. Ridgewood Bd. of Educ., 430 F.3d 159, 203 Ed. Law Rep. 468 (3d Cir. 2005); Jones v. State, 640
So. 2d 1084 (Fla. 1994).
- 4 Postscript Enterprises, Inc. v. Whaley, 658 F.2d 1249 (8th Cir. 1981).
- 5 Lawrence v. Texas, 539 U.S. 558, 123 S. Ct. 2472, 156 L. Ed. 2d 508 (2003).
- 6 Elkins v. U.S., 364 U.S. 206, 80 S. Ct. 1437, 4 L. Ed. 2d 1669 (1960); Stefanelli v. Minard, 342 U.S. 117,
72 S. Ct. 118, 96 L. Ed. 138 (1951).
- 7 Huffman v. State, 204 P.3d 339, 243 Ed. Law Rep. 461 (Alaska 2009).
- 8 State v. Wiedeman, 286 Neb. 193, 835 N.W.2d 698 (2013).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government
Works.

16A Am. Jur. 2d Constitutional Law § 615

American Jurisprudence, Second Edition | May 2021 Update

Constitutional Law

Barbara J. Van Arsdale, J.D.; James Buchwalter, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Lonnie E. Griffith, Jr., J.D.; Janice Holben, J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; Karen L. Schultz, J.D.; Jeffrey J. Shampo, J.D.; and Kimberly C. Simmons, J.D.

IX. Fundamental Constitutional Rights and Privileges

C. Particular Fundamental Constitutional Rights

2. Life, Liberty, and Pursuit of Happiness

b. Liberty Interest in Specific Matters

§ 615. Liberty of contract as part of liberty interest protected by Due Process Clause

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1119 to 1121(3)

The right to contract freely with the expectation that the contract will endure according to its terms is as fundamental to our society as the right to speak without restraint.¹ The freedom to contract is thus a part of the liberty protected by the Due Process Clauses of the Fifth and 14th Amendments.² However, like other rights, freedom of contract is subject to both exceptions³ and limitations.⁴ The right to contract is subject to such restraints as a state in the exertion of its police power reasonably may put upon it to safeguard the public interest.⁵

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [Mark-It Place Foods, Inc. v. New Plan Excel Realty Trust](#), 156 Ohio App. 3d 65, 2004-Ohio-411, 804 N.E.2d 979 (4th Dist. Scioto County 2004).
- ² [Board of Regents of State Colleges v. Roth](#), 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972); [Behavioral Healthcare Partners, Inc. v. Gonzalez-Rivera](#), 392 F. Supp. 2d 191 (D.P.R. 2005); [Morris v. Holshouser](#), 220 N.C. 293, 17 S.E.2d 115, 137 A.L.R. 733 (1941).
"Liberty" within the protection of the Due Process Clause includes the liberty of contract, which, in turn, means freedom from arbitrary or unreasonable restraint. [Moore v. Grillis](#), 205 Miss. 865, 39 So. 2d 505, 10 A.L.R.2d 1425 (1949).

- 3 § 641.
- 4 §§ 642 to 644.
- 5 Double M Const., Inc. v. State Corp. Com'n, 288 Kan. 268, 202 P.3d 7 (2009).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16A Am. Jur. 2d Constitutional Law § 616

American Jurisprudence, Second Edition | May 2021 Update

Constitutional Law

Barbara J. Van Arsdale, J.D.; James Buchwalter, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Lonnie E. Griffith, Jr., J.D.; Janice Holben, J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; Karen L. Schultz, J.D.; Jeffrey J. Shampo, J.D.; and Kimberly C. Simmons, J.D.

IX. Fundamental Constitutional Rights and Privileges

C. Particular Fundamental Constitutional Rights

2. Life, Liberty, and Pursuit of Happiness

b. Liberty Interest in Specific Matters

§ 616. Right to pursue business or occupation for purposes of liberty interest of Due Process Clause

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1114 to 1117(2)

A.L.R. Library

[Application of Stigma-Plus Due Process Claims Other than Education Context](#), 95 A.L.R.6th 341

The word "liberty," as used in the Due Process Clause, includes among other things the liberty of the citizen to pursue any livelihood or lawful vocation.¹

Practice Tip:

A plaintiff asserting interference with a liberty interest in employment in the occupation of his or her choice may demonstrate that the government's action precludes him or her, whether formally or informally, from such a broad range of opportunities that it interferes with his or her constitutionally protected right to follow a chosen trade or profession.²

Caution:

Although liberty component of 14th Amendment's Due Process Clause includes some generalized right to choose one's field of private employment, this right is subject to reasonable government regulation.³ Thus, it has been held that the right to pursue a particular occupation or operate a particular business is not a fundamental constitutional right.⁴

Indeed, the right to earn a livelihood pursuing a lawful occupation is a fundamental right protected by the Constitution, and many authorities consider the preservation of such right to be one of the inherent or inalienable rights protected by the Constitution.⁵ Likewise, the courts have recognized that the right to follow a chosen profession free from unreasonable governmental interference comes within the "liberty" (and "property") concept of the [U.S. Const. Amend. V](#).⁶

However, the right to engage in an occupation, as is true of all rights, is subject to the police power of the government.⁷

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Board of Regents of State Colleges v. Roth](#), 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972); [U.S. v. Robel](#), 389 U.S. 258, 88 S. Ct. 419, 19 L. Ed. 2d 508 (1967); [Greene v. McElroy](#), 360 U.S. 474, 79 S. Ct. 1400, 3 L. Ed. 2d 1377 (1959); [Patterson v. City of Utica](#), 370 F.3d 322 (2d Cir. 2004); [Purdy and Fitzpatrick v. State](#), 71 Cal. 2d 566, 79 Cal. Rptr. 77, 456 P.2d 645, 38 A.L.R.3d 1194 (1969); [Minton v. Quintal](#), 131 Haw. 167, 317 P.3d 1 (2013), as corrected on other grounds, (Dec. 27, 2013); [Berry v. Summers](#), 76 Idaho 446, 283 P.2d 1093 (1955).
An individual has a fundamental right to pursue a particular occupation for which he or she is trained. [Millard Maintenance Service Co. v. Bernero](#), 207 Ill. App. 3d 736, 152 Ill. Dec. 692, 566 N.E.2d 379 (1st Dist. 1990). Our concept of liberty as that word is used in State and Federal Constitutions embraces the right to work and earn a living. [McWhorter v. Commonwealth](#), 191 Va. 857, 63 S.E.2d 20 (1951).
As to rights with respect to business or occupation as constituting "property" within the protection of the Due Process Clause, see § 638.
- 2 [Minton v. Quintal](#), 131 Haw. 167, 317 P.3d 1 (2013), as corrected on other grounds, (Dec. 27, 2013).
- 3 [Conn v. Gabbert](#), 526 U.S. 286, 119 S. Ct. 1292, 143 L. Ed. 2d 399 (1999).
- 4 [Caldwell v. Pima County](#), 172 Ariz. 352, 837 P.2d 154 (Ct. App. Div. 2 1991) (wherein the county board of supervisors determined that a traveling merchant violated a zoning ordinance by selling fruit from his car in a zone where businesses were required to be completely enclosed, and the traveling merchant appealed; holding that (1) the zoning code did not prohibit a legitimate business, and (2) the zoning code was not unconstitutional); [West Cent. Louisiana Entertainment, Inc. v. City of Leesville](#), 594 So. 2d 973 (La. Ct.

[App. 3d Cir. 1992](#)) (upholding the constitutionality of an ordinance regulating an after-hours club serving liquor by the drink).

5 [State ex rel. Hosack v. Yocum](#), 136 Fla. 246, 186 So. 448, 121 A.L.R. 270 (1939).

The right to contract, the right to do business, and the right to labor freely and without restraint are all constitutional rights equally sacred. [Crosby v. Rath](#), 136 Ohio St. 352, 16 Ohio Op. 496, 25 N.E.2d 934 (1940).

6 [U.S. v. Robel](#), 389 U.S. 258, 88 S. Ct. 419, 19 L. Ed. 2d 508 (1967); [Greene v. McElroy](#), 360 U.S. 474, 79 S. Ct. 1400, 3 L. Ed. 2d 1377 (1959); [Konigsberg v. State Bar of Cal.](#), 353 U.S. 252, 77 S. Ct. 722, 1 L. Ed. 2d 810 (1957); [International Union, United Government Sec. Officers of America v. Clark](#), 878 F. Supp. 2d 127 (D.D.C. 2012), judgment aff'd, 766 F.3d 25 (D.C. Cir. 2014).

An individual has the fundamental right to pursue a particular occupation for which he or she is trained. [Scheffel & Co., P.C. v. Fessler](#), 356 Ill. App. 3d 308, 292 Ill. Dec. 854, 827 N.E.2d 1 (5th Dist. 2005).

7 [McMahon v. Kindlarski](#), 512 F.3d 983 (7th Cir. 2008); [MacArthur v. San Juan County](#), 416 F. Supp. 2d 1098 (D. Utah 2005).

As to the police power, generally, see §§ [333](#) to [343](#).

As to regulation of trades and professions, generally, see [Am. Jur. 2d, Occupations, Trades, and Professions](#) §§ [1](#) to [69](#).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16A Am. Jur. 2d Constitutional Law § 617

American Jurisprudence, Second Edition | May 2021 Update

Constitutional Law

Barbara J. Van Arsdale, J.D.; James Buchwalter, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Lonnie E. Griffith, Jr., J.D.; Janice Holben, J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; Karen L. Schultz, J.D.; Jeffrey J. Shampo, J.D.; and Kimberly C. Simmons, J.D.

IX. Fundamental Constitutional Rights and Privileges

C. Particular Fundamental Constitutional Rights

2. Life, Liberty, and Pursuit of Happiness

b. Liberty Interest in Specific Matters

§ 617. Matters of employment for purposes of liberty interest of Due Process Clause

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1121(3)

Trial Strategy

[Prosecution or Defense of Action Alleging Employment Discrimination on Basis of Religion, 135 Am. Jur. Proof of Facts 3d 183](#)

[Termination or Demotion of a Public Employee In Retaliation For Speaking Out As a Violation of Right of Free Speech, 22 Am. Jur. Proof of Facts 3d 203](#)

The right to work for a living in the common occupations of the community has been held to be of the very essence of the personal freedom and opportunity that it was the purpose of the 14th Amendment to secure.¹ An employee has a due process right to be free from unreasonable, governmental interference with private employment.² Although the liberty component of the 14th Amendment's Due Process Clause includes some generalized right to choose one's field of private employment, this right is subject to reasonable government regulation³ and is a protected interest subject to rational basis review.⁴

Observation:

The existence of a property right in employment for purposes of due process is determined by state law. A property interest in employment may be created by statute, written contract, or a mutually explicit understanding enforceable under state law as an implied contract.⁵

The Supreme Court has also recognized that the right to hold specific private employment free from unreasonable governmental interference comes within the "liberty" (and "property") concept of the [U.S. Const. Amend. V](#).⁶ On the other hand, as also has been held by the Supreme Court, it would stretch the concept of procedural due process too far to suggest that a person is deprived of "liberty" when he or she simply is not retained in one job, but remains as free as before to seek another.⁷ The due process liberty interest also applies in situations involving the obtaining, rather than the retaining, of federal employment.⁸

There is no fundamental constitutional right to work for or to have continued employment with a particular public or private employer.⁹ Thus, one employed in public service does not have a constitutional right to such employment and is subject to reasonable supervision and restriction to the end that proper discipline may be maintained and that employee's activities may not be allowed to disrupt or impair the public service.¹⁰ However, a protected due process property interest exists in the continued employment as a tenured public employee.¹¹ The right to public employment also is protected by the Due Process Clause against an arbitrary determination of loyalty as a condition of eligibility for such employment.¹²

Observation:

Accusations of a public employee's dishonesty or immorality are sufficiently stigmatizing to implicate a liberty interest protected by procedural due process, but less severe accusations must be analyzed on a case-by-case basis, and allegations of mere incompetence or inability are not sufficient.¹³

The discharge of an employee for failing to disclose to his or her employer his or her pending discrimination litigation against a client does not violate the employee's constitutional rights to pursue his or her discrimination claim or to pursue and maintain his or her employment; the employer has a legitimate expectation to be informed of such a conflict of interest.¹⁴

Footnotes

- 1 [Application of Griffiths](#), 413 U.S. 717, 93 S. Ct. 2851, 37 L. Ed. 2d 910 (1973); [Burns v. Brinkley](#), 933 F. Supp. 528 (E.D. N.C. 1996).
An individual's right to seek and obtain private employment is entitled to constitutional protection and to protection at the hands of a court of equity. [Xiao v. Reno](#), 930 F. Supp. 1377 (N.D. Cal. 1996).
While the right to vote is one of the most basic, the right to lawful employment is absolute. [Nixon v. Com.](#), 789 A.2d 376 (Pa. Commw. Ct. 2001), *aff'd* on other grounds, 576 Pa. 385, 839 A.2d 277 (2003).
- 2 [DiMartini v. Ferrin](#), 906 F.2d 465 (9th Cir. 1990).
- 3 [Conn v. Gabbert](#), 526 U.S. 286, 119 S. Ct. 1292, 143 L. Ed. 2d 399 (1999); [McCool v. City of Philadelphia](#), 494 F. Supp. 2d 307 (E.D. Pa. 2007).
- 4 [Amunrud v. Board of Appeals](#), 158 Wash. 2d 208, 143 P.3d 571, 30 A.L.R.6th 775 (2006) (abrogated on other grounds by, [Yim v. City of Seattle](#), 194 Wash. 2d 682, 451 P.3d 694 (2019)).
- 5 [Mullen v. City of Grenada, Miss.](#), 704 F. Supp. 2d 567 (N.D. Miss. 2010).
- 6 [U.S. v. Robel](#), 389 U.S. 258, 88 S. Ct. 419, 19 L. Ed. 2d 508 (1967).
Due process protects a government employee's liberty interest in employment when the government publicizes stigmatizing information, which is based upon an unsupported charge, which could wrongfully injure the reputation of an employee. [Sutton v. U.S.](#), 65 Fed. Cl. 800 (2005).
As to the protectible interest in reputation, generally, see § 621.
- 7 [Bishop v. Wood](#), 426 U.S. 341, 96 S. Ct. 2074, 48 L. Ed. 2d 684 (1976); [Shirck v. Thomas](#), 486 F.2d 691 (7th Cir. 1973).
- 8 [Hampton v. Mow Sun Wong](#), 426 U.S. 88, 96 S. Ct. 1895, 48 L. Ed. 2d 495 (1976).
- 9 [Graham v. Kirkwood Meadows Public Util. Dist.](#), 21 Cal. App. 4th 1631, 26 Cal. Rptr. 2d 793 (3d Dist. 1994).
For purposes of a due process claim, at will employees have no constitutionally protected property interest in employment. [Stark v. University of Southern Mississippi](#), 8 F. Supp. 3d 825, 309 Ed. Law Rep. 252, 88 Fed. R. Serv. 3d 243 (S.D. Miss. 2014).
- 10 [Board of Educ. of City of Los Angeles v. Swan](#), 41 Cal. 2d 546, 261 P.2d 261 (1953) (overruled on other grounds by, [Bekiaris v. Board of Education](#), 6 Cal. 3d 575, 100 Cal. Rptr. 16, 493 P.2d 480 (1972)).
- 11 [Michalowicz v. Village of Bedford Park](#), 528 F.3d 530 (7th Cir. 2008).
- 12 [Peters v. Hobby](#), 349 U.S. 331, 75 S. Ct. 790, 99 L. Ed. 1129 (1955); [Wilson v. City of Los Angeles](#), 54 Cal. 2d 61, 4 Cal. Rptr. 489, 351 P.2d 761 (1960).
Even though a governmental purpose is legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved; this principle is not inapplicable because legislation is aimed at keeping subversives out of teaching ranks. [Keyishian v. Board of Regents of University of State of N. Y.](#), 385 U.S. 589, 87 S. Ct. 675, 17 L. Ed. 2d 629 (1967).
As to the propriety, under the Due Process Clause, of property ownership as a condition of holding public office, see [Am. Jur. 2d, Public Officers and Employees](#) § 71.
As to the propriety of requiring employees of a school board to take a loyalty oath, see [Am. Jur. 2d, Schools](#) § 167.
- 13 [Summers v. City of McCall](#), 84 F. Supp. 3d 1126 (D. Idaho 2015).
- 14 [Hafner v. Montana Dept. of Labor and Industry](#), 280 Mont. 95, 929 P.2d 233 (1996).

16A Am. Jur. 2d Constitutional Law § 618

American Jurisprudence, Second Edition | May 2021 Update

Constitutional Law

Barbara J. Van Arsdale, J.D.; James Buchwalter, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Lonnie E. Griffith, Jr., J.D.; Janice Holben, J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; Karen L. Schultz, J.D.; Jeffrey J. Shampo, J.D.; and Kimberly C. Simmons, J.D.

IX. Fundamental Constitutional Rights and Privileges

C. Particular Fundamental Constitutional Rights

2. Life, Liberty, and Pursuit of Happiness

b. Liberty Interest in Specific Matters

§ 618. Matters of education and public schools for purposes of liberty interest of Due Process Clause

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1075 to 1078

A.L.R. Library

[School's Violation of Student's Substantive Due Process Rights by Suspending or Expelling Student, 90 A.L.R.6th 235](#)
[Validity of state or local government regulation requiring private school to report attendance and similar information to government—post-Yoder cases, 8 A.L.R.5th 875](#)

Trial Strategy

[Proof that School Board Improperly Expelled Student from School, 55 Am. Jur. Proof of Facts 3d 313](#)

Forms

Forms relating to education, see Am. Jur. Pleading and Practice Forms, Constitutional Law [\[Westlaw®\(r\) Search Query\]](#)

As stated by the Supreme Court, the term "liberty," as used in the Due Process Clauses, embraces the right to acquire useful knowledge.¹ Nonetheless, the Court has ruled that although a public education is not merely some governmental benefit indistinguishable from other forms of social welfare legislation, it is not a "right" granted to an individual by the constitution.² Thus, the right to academic freedom is not absolute.³ Some state constitutions have been interpreted as providing for a fundamental right to an education,⁴ while other state constitutions are said not to provide such a fundamental right.⁵ There also is no constitutionally protected right to be taught by the teachers of one's own choice, and there is no federal constitutional right to have local school boards make educational decisions.⁶ Further, there is no constitutional right to play sports or engage in other school activities,⁷ and parents have no clearly established right to have their children compete in interscholastic athletics.⁸ However, the right to educate one's children as one chooses and the right to study foreign languages in a private school is made applicable to the states by the force of the [U.S. Const. Amends. I, XIV](#).⁹ Also, a state statute requiring all children between the ages of eight and 16 years to attend the public schools unconstitutionally interferes with the 14th Amendment's right of the liberty of parents and guardians to direct the upbringing and education of children under their control.¹⁰ Similarly, the Due Process Clause, in its procedural aspects, protects students against expulsion from the public school system without notice or hearing, either before or after such expulsion.¹¹

Observation:

No due process violation occurs when a principal calls a high school student out of class on three or four occasions in order to permit police officers to question the student.¹²

Where the "minimum standards" promulgated by the state board of education are so comprehensive in scope and effect as to eradicate the distinction between public and nonpublic education, application of these "minimum standards" to defendants, parents of children attending a nonpublic religious school, abrogates their fundamental freedom, protected by the liberty clause of the 14th Amendment, to direct the upbringing and education, secular or religious, of their children.¹³ Also, no state-created interest in liberty going beyond the 14th Amendment's protection of freedom from bodily restraint and corporal punishment is involved with regard to corporal punishment of a public school student.¹⁴ A statute prohibiting the organization of fraternities, sororities, and other secret organizations in public schools does not to deprive pupils of their inalienable right to life, liberty, and the pursuit of happiness.¹⁵

Footnotes

- 1 Board of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972).
- 2 Plyler v. Doe, 457 U.S. 202, 102 S. Ct. 2382, 72 L. Ed. 2d 786, 4 Ed. Law Rep. 953 (1982).

There is no federal constitutional right to an education. *Mazeveski v. Horseheads Cent. School Dist.*, 950 F. Supp. 69, 115 Ed. Law Rep. 885 (W.D. N.Y. 1997); *Doe v. Superintendent of Schools of Worcester*, 421 Mass. 117, 653 N.E.2d 1088, 102 Ed. Law Rep. 781 (1995); *Kolesnick By and Through Shaw v. Omaha Public School Dist.*, 251 Neb. 575, 558 N.W.2d 807, 115 Ed. Law Rep. 1054 (1997).

For purposes of a substantive due process analysis concerning an asserted infringement of a liberty interest under the U.S. Const. Amend. XIV, child-care institutions operated by a state in the exercise of its *patriae* responsibility are not constitutionally required to be funded at such a level as to provide the best schooling or the best health care available, nor does the constitution require the states to substitute, whenever possible, private nonadoptive custody for institutional care. *Reno v. Flores*, 507 U.S. 292, 113 S. Ct. 1439, 123 L. Ed. 2d 1 (1993).

Even though education is not a fundamental right under the Constitution, it is the very foundation of good citizenship; as a result, deprivation of a child's education is a very serious matter which requires significant procedural safeguards. *Carey on Behalf of Carey v. Maine School Administrative Dist. No. 17*, 754 F. Supp. 906, 65 Ed. Law Rep. 725 (D. Me. 1990).

Though there is no federal constitutional right to a free public education, a state may not unequally condition access to a public education on the performance of an act that infringes on the exercise of U.S. Const. Amend. I rights. *Rader v. Johnston*, 924 F. Supp. 1540, 109 Ed. Law Rep. 1228 (D. Neb. 1996).
- 3 *Forum for Academic and Institutional Rights, Inc. v. Rumsfeld*, 291 F. Supp. 2d 269, 183 Ed. Law Rep. 715 (D.N.J. 2003), rev'd and remanded on other grounds, 390 F.3d 219, 193 Ed. Law Rep. 657, 5 A.L.R. Fed. 2d 765 (3d Cir. 2004), rev'd and remanded on other grounds, 547 U.S. 47, 126 S. Ct. 1297, 164 L. Ed. 2d 156, 206 Ed. Law Rep. 819 (2006) and judgment aff'd, 446 F.3d 1317 (3d Cir. 2006).
- 4 *Meyers By and Through Meyers v. Board of Educ. of San Juan School Dist.*, 905 F. Supp. 1544, 105 Ed. Law Rep. 453 (D. Utah 1995) (interpreting the Utah Constitution); *Skeen v. State*, 505 N.W.2d 299 (Minn. 1993); *Reichley by Wall v. North Penn School Dist.*, 533 Pa. 519, 626 A.2d 123, 83 Ed. Law Rep. 1030 (1993); *Brigham v. State*, 166 Vt. 246, 692 A.2d 384, 117 Ed. Law Rep. 667 (1997); *Campbell County School Dist. v. State*, 907 P.2d 1238, 105 Ed. Law Rep. 771 (Wyo. 1995), as clarified on denial of reh'g, (Dec. 6, 1995).

The Arizona Constitution establishes a fundamental constitutional right to education on the part of students between the ages of six and 21, and state courts are free to interpret the state constitution differently from the United States Supreme Court's interpretation of the Federal Constitution. *Magyar By and Through Magyar v. Tucson Unified School Dist.*, 958 F. Supp. 1423, 22 A.D.D. 913, 117 Ed. Law Rep. 962 (D. Ariz. 1997).
- 5 *Idaho Schools for Equal Educational Opportunity v. Evans*, 123 Idaho 573, 850 P.2d 724, 82 Ed. Law Rep. 660 (1993); *Committee for Educational Rights v. Edgar*, 267 Ill. App. 3d 18, 204 Ill. Dec. 378, 641 N.E.2d 602, 95 Ed. Law Rep. 662 (1st Dist. 1994), aff'd, 174 Ill. 2d 1, 220 Ill. Dec. 166, 672 N.E.2d 1178, 114 Ed. Law Rep. 576 (1996); *Kolesnick By and Through Shaw v. Omaha Public School Dist.*, 251 Neb. 575, 558 N.W.2d 807, 115 Ed. Law Rep. 1054 (1997); *City of Pawtucket v. Sundlun*, 662 A.2d 40, 102 Ed. Law Rep. 235 (R.I. 1995).

There is no state fundamental constitutional right to an education or to a minimum level of education. *Brady v. A Certain Teacher*, 166 Misc. 2d 566, 632 N.Y.S.2d 418, 104 Ed. Law Rep. 459 (Sup 1995) (citing N.Y. Const. Art. XI, § 1).
- 6 *Mount Sinai Union Free School Dist. v. Board of Educ. Port Jefferson Public Schools*, 836 F. Supp. 95, 87 Ed. Law Rep. 435 (E.D. N.Y. 1993).
- 7 *Arkansas Activities Ass'n v. Meyer*, 304 Ark. 718, 805 S.W.2d 58, 66 Ed. Law Rep. 847 (1991).
- 8 *McFarlin v. Newport Special School Dist.*, 980 F.2d 1208, 79 Ed. Law Rep. 415 (8th Cir. 1992).
- 9 *Griswold v. Connecticut*, 381 U.S. 479, 85 S. Ct. 1678, 14 L. Ed. 2d 510 (1965).
- 10 *Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510, 45 S. Ct. 571, 69 L. Ed. 1070, 39 A.L.R. 468 (1925).
- 11 *Goss v. Lopez*, 419 U.S. 565, 95 S. Ct. 729, 42 L. Ed. 2d 725 (1975).

- 12 [Burreson v. Barneveld School Dist](#), 434 F. Supp. 2d 588, 210 Ed. Law Rep. 1112 (W.D. Wis. 2006).
- 13 [State v. Whisner](#), 47 Ohio St. 2d 181, 1 Ohio Op. 3d 105, 351 N.E.2d 750 (1976).
- 14 [Ingraham v. Wright](#), 430 U.S. 651, 97 S. Ct. 1401, 51 L. Ed. 2d 711 (1977).
- 15 [Satan Fraternity v. Board of Public Instruction for Dade County](#), 156 Fla. 222, 22 So. 2d 892 (1945).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16A Am. Jur. 2d Constitutional Law § 619

American Jurisprudence, Second Edition | May 2021 Update

Constitutional Law

Barbara J. Van Arsdale, J.D.; James Buchwalter, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Lonnie E. Griffith, Jr., J.D.; Janice Holben, J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; Karen L. Schultz, J.D.; Jeffrey J. Shampo, J.D.; and Kimberly C. Simmons, J.D.

IX. Fundamental Constitutional Rights and Privileges

C. Particular Fundamental Constitutional Rights

2. Life, Liberty, and Pursuit of Happiness

b. Liberty Interest in Specific Matters

§ 619. Personal appearance and grooming for purposes of liberty interest of Due Process Clause

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1091, 1092

A.L.R. Library

[Validity, construction, and application of restrictions on use or possession of tobacco products in correctional facilities, 66 A.L.R.5th 237](#)

[Validity of law criminalizing wearing dress of opposite sex, 12 A.L.R.4th 1249](#)

[Employer's Grooming Policy as Religious Discrimination under Federal Law, 13 A.L.R. Fed. 3d Art. 1](#)

[Employer's Dress Policy as Religious Discrimination Under Federal Law, 12 A.L.R. Fed. 3d Art. 5](#)

Trial Strategy

Proof That School Board Improperly Expelled Student from School, 55 Am. Jur. Proof of Facts 3d 313

The right of an individual to control his or her personal appearance, including grooming and hairstyle, is sufficiently substantial to be accorded the protection of the liberty assurance of the Due Process Clause of the 14th Amendment.¹ The Supreme Court has assumed without deciding that "the citizenry at large has some sort of "liberty" interest within the 14th Amendment in matters of personal appearance."² However, this right is not absolute, and it is necessary for a court to assess the weight to be given to legitimate and opposed interests of society that occasion legislation and rules affecting the personal appearance of the individual.³

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Montalvo v. Madera Unified Sch. Dist. Bd. of Education](#), 21 Cal. App. 3d 323, 98 Cal. Rptr. 593 (5th Dist. 1971); [City of Chicago v. Wilson](#), 75 Ill. 2d 525, 27 Ill. Dec. 458, 389 N.E.2d 522, 12 A.L.R.4th 1242 (1978). The choice of personal appearance is an ingredient of an individual's personal liberty, and any restriction on that right must be justified by a legitimate state interest reasonably related to the regulation. [Dwen v. Barry](#), 483 F.2d 1126 (2d Cir. 1973). As to the wearing of a beard or long hair as protected under the [U.S. Const. Amend. I](#) as a form of symbolic conduct or expression, see § 620.
- 2 [Kelley v. Johnson](#), 425 U.S. 238, 96 S. Ct. 1440, 47 L. Ed. 2d 708 (1976).
- 3 [Michini v. Rizzo](#), 379 F. Supp. 837 (E.D. Pa. 1974), *aff'd*, 511 F.2d 1394 (3d Cir. 1975).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16A Am. Jur. 2d Constitutional Law § 620

American Jurisprudence, Second Edition | May 2021 Update

Constitutional Law

Barbara J. Van Arsdale, J.D.; James Buchwalter, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Lonnie E. Griffith, Jr., J.D.; Janice Holben, J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; Karen L. Schultz, J.D.; Jeffrey J. Shampo, J.D.; and Kimberly C. Simmons, J.D.

IX. Fundamental Constitutional Rights and Privileges

C. Particular Fundamental Constitutional Rights

2. Life, Liberty, and Pursuit of Happiness

b. Liberty Interest in Specific Matters

§ 620. Personal appearance and grooming for purposes of liberty interest of Due Process Clause—Particular situations

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1091, 1092

Trial Strategy

[Proof That School Board Improperly Expelled Student from School, 55 Am. Jur. Proof of Facts 3d 313](#)

An individual's right to control his or her personal appearance, including grooming and hairstyle, has been judicially protected in a variety of specific situations. However, any constitutional right a person may have to wear long hair and a beard may be limited during lawful incarceration after conviction, and rules requiring short hair and a clean-shaven face are neither arbitrary nor unreasonable as regards convicted prisoners, because the individual's right to "aspects of his appearance" is outweighed by the state's interest in maintaining sanitary conditions and discipline in prison facilities.¹

The Supreme Court held that a regulation establishing hair-grooming standards for male members of a county police force did not violate a county police officer's liberty right under the Due Process Clause of the 14th Amendment,² but a federal court has voided the dismissal of a school bus driver for having grown a mustache.³ There has also been a substantial amount of litigation

concerning appearance or grooming regulations or requirements as applied to school children⁴ and the question whether such regulations by employers violate the civil rights of employees.⁵ Also, the question has been raised as to whether an employee's refusal to shave off a beard or trim his or her hair constitutes misconduct barring unemployment compensation benefits.⁶

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Zeigler v. Riley](#), 67 Misc. 2d 82, 323 N.Y.S.2d 589 (Sup 1971), order aff'd, 38 A.D.2d 685, 327 N.Y.S.2d 847 (4th Dep't 1971), order aff'd, 30 N.Y.2d 617, 331 N.Y.S.2d 41, 282 N.E.2d 127 (1972).
- 2 [Kelley v. Johnson](#), 425 U.S. 238, 96 S. Ct. 1440, 47 L. Ed. 2d 708 (1976) (stating that assuming that the citizenry at large has some sort of liberty interest within the 14th Amendment in matters of personal appearance, the choice reflected in the regulation that similarity in the appearance of police officers is desirable was not so irrational that it may be branded "arbitrary," and therefore a deprivation of the police officer's "liberty" interest in freedom to choose his own hair style).
- 3 [Pence v. Rosenquist](#), 573 F.2d 395 (7th Cir. 1978).
- 4 Am. Jur. 2d, Schools §§ 309 to 311.
- 5 Am. Jur. 2d, Job Discrimination §§ 436 to 443.
- 6 Am. Jur. 2d, Unemployment Compensation §§ 75, 157.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16A Am. Jur. 2d Constitutional Law § 621

American Jurisprudence, Second Edition | May 2021 Update

Constitutional Law

Barbara J. Van Arsdale, J.D.; James Buchwalter, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Lonnie E. Griffith, Jr., J.D.; Janice Holben, J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; Karen L. Schultz, J.D.; Jeffrey J. Shampo, J.D.; and Kimberly C. Simmons, J.D.

IX. Fundamental Constitutional Rights and Privileges

C. Particular Fundamental Constitutional Rights

2. Life, Liberty, and Pursuit of Happiness

b. Liberty Interest in Specific Matters

§ 621. Interest in reputation for purposes of liberty interest of Due Process Clause

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1081, 1082

A.L.R. Library

[Application of Stigma-Plus Due Process Claims Other than Education Context](#), 95 A.L.R.6th 341

Trial Strategy

[Proof That an Employee Has Been Defamed by His or Her Employer or Former Employer](#), 105 Am. Jur. Proof of Facts 3d 345
[Proof of Facts Establishing a Party's Entitlement to Punitive Damages in a Defamation Cause of Action](#), 104 Am. Jur. Proof of Facts 3d 221
[Proof of Facts Establishing Affirmative Defenses Against a Claim for Defamation](#), 99 Am. Jur. Proof of Facts 3d 393

While there is some authority, at least in the state courts, that the right to pursue and obtain happiness includes by its very nature the right to live free from unwarranted attacks by others on one's liberty, property, or reputation, and that any person living a life of rectitude has that right of happiness which includes freedom from unnecessary attacks on his or her character, social standing, or reputation,¹ the United States Supreme Court has held that a person's interest in his or her reputation alone, apart from some more tangible interest such as employment, is not a "liberty" by itself sufficient to invoke the procedural protection of the Due Process Clauses of the Fifth and 14th Amendments.² On the other hand, in connection with other constitutional rights, an interest in reputation has been considered by the Supreme Court as a factor in determining whether due process "liberty" was violated.³ The infliction of a stigma to one's reputation states a claim for deprivation of liberty without due process within the meaning of the 14th Amendment.⁴

Practice Tip:

In showing that the government stigmatized the reputation of an employee of a contractor for the government by revoking his or her security clearance, as required to support a claim that the government violated the employee's [U.S. Const. Amend. V](#) liberty interest in his or her reputation by revoking his or her clearance without due process, the employee may establish stigma to his or her reputation by showing that the government charged him or her with dishonesty and that the stigma hampered his or her future employment prospects.⁵

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Kerby v. Hal Roach Studios](#), 53 Cal. App. 2d 207, 127 P.2d 577 (2d Dist. 1942).
A constitutional liberty interest can only be challenged when a government action puts a person's good name, reputation, honor, or integrity into question; however, an unfavorable evaluation of a city employee did not implicate a liberty interest where the only dissemination of information was by the employee himself. [Kirschner v. Department of Environmental Protection of City of New York](#), 157 A.D.2d 576, 550 N.Y.S.2d 321 (1st Dep't 1990).
The enjoyment of private reputation unassailed is a right entitled to the protection of the law and of the constitution as much as are the rights to the possession of life, liberty, or property. [Harris v. Nashville Trust Co.](#), 128 Tenn. 573, 162 S.W. 584 (1914).
- 2 [Paul v. Davis](#), 424 U.S. 693, 96 S. Ct. 1155, 47 L. Ed. 2d 405 (1976).
The constitution offers no protection for reputational injury. [Ramirez v. Butte-Silver Bow County](#), 298 F.3d 1022 (9th Cir. 2002), *aff'd*, 540 U.S. 551, 124 S. Ct. 1284, 157 L. Ed. 2d 1068 (2004).
A government employee's reputation-plus claim requires some official action because government defamation, alone, is insufficient to create a liberty interest under the Due Process Clause. [Evangelou v. District of Columbia](#), 63 F. Supp. 3d 96 (D.D.C. 2014), *aff'd*, 639 Fed. Appx. 1 (D.C. Cir. 2016).
Under the "reputation-plus" theory for establishing a liberty interest due process claim, a plaintiff must show an adverse employment action accompanied by official defamation. [Okpala v. District of Columbia](#), 819 F. Supp. 2d 13 (D.D.C. 2011).
- 3 [Bishop v. Wood](#), 426 U.S. 341, 96 S. Ct. 2074, 48 L. Ed. 2d 684 (1976).
A public school teacher was entitled to a fair hearing prior to a school board's public announcement of charges which might impair his chances of future employment as a school supervisor and which might damage

his professional reputation where the defamation occurred in the course of termination of his employment. [Huntley v. Community School Bd. of Brooklyn, New York School Dist. No. 14](#), 543 F.2d 979 (2d Cir. 1976). Dismissal of a noncivil service federal employee who had no employment contract, on charges impugning his honesty and integrity, deprived him of his "liberty," and he had a [U.S. Const. Amend. V](#) right to some form of procedural due process. [McNeill v. Butz](#), 480 F.2d 314 (4th Cir. 1973).

The unavailability of any type of formal hearing to a party charged under Army regulations relating to discrimination in housing deprives such party of his or her constitutional rights without due process of law in that the alleged resulting injury to the party's reputation or good name is a deprivation of the party's "liberty" interests under the [U.S. Const. Amend. V](#). [Connell v. Shoemaker](#), 555 F.2d 483 (5th Cir. 1977).

4 [Colaizzi v. Walker](#), 542 F.2d 969 (7th Cir. 1976) (stigma accompanied by discharge or failure to rehire).

"Stigma plus" refers to the showing a plaintiff must make in order to recover on a claim for a violation of a liberty interest in reputation under the Due Process Clause. [Graham v. City of Philadelphia](#), 402 F.3d 139 (3d Cir. 2005).

5 [Ranger v. Tenet](#), 274 F. Supp. 2d 1 (D.D.C. 2003).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16A Am. Jur. 2d Constitutional Law § 622

American Jurisprudence, Second Edition | May 2021 Update

Constitutional Law

Barbara J. Van Arsdale, J.D.; James Buchwalter, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Lonnie E. Griffith, Jr., J.D.; Janice Holben, J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; Karen L. Schultz, J.D.; Jeffrey J. Shampo, J.D.; and Kimberly C. Simmons, J.D.

IX. Fundamental Constitutional Rights and Privileges

C. Particular Fundamental Constitutional Rights

2. Life, Liberty, and Pursuit of Happiness

b. Liberty Interest in Specific Matters

§ 622. Matrimonial or family matters for purposes of liberty interest of Due Process Clause

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1093, 1094

A.L.R. Library

[Validity of Bigamy and Polygamy Statutes and Constitutional Provisions](#), 22 A.L.R.6th 1

[Marriage Between Persons of Same Sex—United States and Canadian Cases](#), 1 A.L.R. Fed. 2d 1

Trial Strategy

[Validity of Marriage](#), 177 Am. Jur. Proof of Facts 3d 111

The freedom to enter into and carry on certain intimate or private relationships is a fundamental element of liberty protected by the Bill of Rights, and such relationships may take various forms, including the most intimate; the [U.S. Const. Amend. I](#) protects

those relationships, including family relationships, that presuppose deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs, but also distinctively personal aspects of one's life.¹ Thus, freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause;² there does exist a private realm of family life which the state cannot enter.³ In invalidating a state antimiscegenation statute, the Supreme Court observed that the freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free people.⁴

In holding that the Due Process Clause of the 14th Amendment was violated by a state school board's overly restrictive rules involving mandatory maternity leave for teachers, the Supreme Court based its decision on the principle that there is a right to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.⁵ The Supreme Court has also held unconstitutional a city housing ordinance limiting occupancy of a dwelling unit to members of a single family, which was interpreted to prohibit a grandmother from residing with her son and grandchildren, the court viewing the ordinance as violative of the freedom of personal choice in matters of family life, without justification in any important governmental interest.⁶ Although the right of a family to determine its own living arrangements has never been accorded the status of a fundamental right, it is nonetheless recognized as constitutionally protected.⁷ Also, a state statute making it a criminal offense for married couples to use contraceptives deprives married couples of "liberty" without due process of law.⁸ However, an immigration statute, imposing a two-year nonresidency requirement for aliens who marry United States citizens while subject to deportation proceedings, does not violate the fundamental right of marriage or of residence of United States citizen-spouses.⁹

A child has a constitutionally protected due process liberty interest in a relationship with his or her parent.¹⁰ Children in foster care have a substantive due process right under the 14th Amendment to protection from harm.¹¹ So long as a parent adequately cares for his or her children, there will normally be no reason for the state to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children.¹²

Although the Supreme Court acknowledges that the relationship between a parent and child is constitutionally protected, it has held that a state could apply its "best interests of the child" standard and grant an adoption without the consent of the father, who was not married to the mother, even though the state's statutes gave both divorced parents a right to veto an adoption.¹³ The constitutional protection is only for the termination of parent-child relationships or interference so intrusive as to be equivalent of termination.¹⁴

The fact that a father, on the advice of counsel, accepts the terms of a divorce decree requiring him to undergo psychological testing and treatment does not constitute an interference with his liberty interests.¹⁵

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Board of Directors of Rotary Intern. v. Rotary Club of Duarte](#), 481 U.S. 537, 107 S. Ct. 1940, 95 L. Ed. 2d 474 (1987).
Provisions of a state's social services law, which require that parents who wish to obtain state-subsidized residential care for their children must transfer temporary custody of the children to the state, do not violate the parents' fundamental right to family integrity. [Joyner by Lowry v. Dumpson](#), 712 F.2d 770 (2d Cir. 1983).
The Federal Communication Commission's (FCC) antinepotism policy did not unconstitutionally burden an employee's freedom to marry when the FCC transferred the employee after her husband became head of her division since the employee was reassigned to a new division at her former grade and salary. [Cutts v.](#)

- 2 Fowler, 692 F.2d 138 (D.C. Cir. 1982) (disapproved of on other grounds by, *Spagnola v. Mathis*, 859 F.2d 223 (D.C. Cir. 1988)).
- 3 Smith v. Organization of Foster Families For Equality and Reform, 431 U.S. 816, 97 S. Ct. 2094, 53 L. Ed. 2d 14 (1977); Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632, 94 S. Ct. 791, 39 L. Ed. 2d 52 (1974); Board of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972); Loving v. Virginia, 388 U.S. 1, 87 S. Ct. 1817, 18 L. Ed. 2d 1010 (1967).
- 4 As to the constitutional dimensions of the right to obtain an abortion, see Am. Jur. 2d, Abortion and Birth Control §§ 3 to 87.
- 5 Smith v. Organization of Foster Families For Equality and Reform, 431 U.S. 816, 97 S. Ct. 2094, 53 L. Ed. 2d 14 (1977).
- 6 Loving v. Virginia, 388 U.S. 1, 87 S. Ct. 1817, 18 L. Ed. 2d 1010 (1967).
- 7 Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632, 94 S. Ct. 791, 39 L. Ed. 2d 52 (1974).
- 8 Moore v. City of East Cleveland, Ohio, 431 U.S. 494, 97 S. Ct. 1932, 52 L. Ed. 2d 531 (1977).
- 9 Lorenzo v. Mississippi High School Activities Ass'n, Inc., 662 F.2d 1117, 1 Ed. Law Rep. 113 (5th Cir. 1981).
- 10 Griswold v. Connecticut, 381 U.S. 479, 85 S. Ct. 1678, 14 L. Ed. 2d 510 (1965).
- 11 Bright v. Parra, 919 F.2d 31 (5th Cir. 1990).
- 12 Lowery v. County of Riley, 522 F.3d 1086 (10th Cir. 2008); In re T.N., 180 S.W.3d 376 (Tex. App. Amarillo 2005).
- 13 Tylene M. v. Heartshare Children's Services, 390 F. Supp. 2d 296 (S.D. N.Y. 2005).
- 14 Global Travel Marketing, Inc. v. Shea, 908 So. 2d 392 (Fla. 2005).
- 15 Quilloin v. Walcott, 434 U.S. 246, 98 S. Ct. 549, 54 L. Ed. 2d 511 (1978).
- 16 Harry A. v. Duncan, 351 F. Supp. 2d 1060, 195 Ed. Law Rep. 206 (D. Mont. 2005), *aff'd*, 234 Fed. Appx. 463, 223 Ed. Law Rep. 626 (9th Cir. 2007).
- 17 Metzger v. Sebek, 892 S.W.2d 20 (Tex. App. Houston 1st Dist. 1994), *writ denied*, (Mar. 30, 1995).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16A Am. Jur. 2d Constitutional Law § 623

American Jurisprudence, Second Edition | May 2021 Update

Constitutional Law

Barbara J. Van Arsdale, J.D.; James Buchwalter, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Lonnie E. Griffith, Jr., J.D.; Janice Holben, J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; Karen L. Schultz, J.D.; Jeffrey J. Shampo, J.D.; and Kimberly C. Simmons, J.D.

IX. Fundamental Constitutional Rights and Privileges

C. Particular Fundamental Constitutional Rights

2. Life, Liberty, and Pursuit of Happiness

b. Liberty Interest in Specific Matters

§ 623. Right to travel for purposes of liberty interest of Due Process Clause

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 1280

The constitutional freedom to travel includes the freedom to enter and abide in any state in the Union.¹ However, the means or mode of traveling may be subjected to reasonable regulations.² While the freedom to travel within the United States has been held to be a basic right under the Federal Constitution which is independent of a specific provision therein,³ the right of locomotion has also been held to be a part of the "liberty" guaranteed by the Due Process Clause.⁴ The right to migrate protects residents of one state from being disadvantaged or from being treated differently, simply because of the timing of their migration, from other similarly situated residents. Laws which burden the right to migrate must be necessary to further a compelling state interest.⁵ In addition to protecting persons against the erection of actual barriers to interstate movement, the right to travel when applied to residency requirements protects new residents of a state from being disadvantaged because of their recent migration or from otherwise being treated differently from longer term residents.⁶ Thus, the Supreme Court has stated that the liberty secured by the Due Process Clause of the 14th Amendment consists, in part, in the right of a person to live and work where he or she will.⁷

State law implicates the constitutional right to travel when it actually deters such travel, when impeding travel is its primary objective, or when it uses any classification which it serves to penalize exercise of that right.⁸

The Supreme Court has accepted as constitutional the federal statute authorizing the incarceration of material witnesses in advance of trial.⁹ Similarly, the Uniform Act to Secure Attendance of Out-of-State Witnesses does not violate the 14th Amendment by unduly restricting a citizen's right to ingress and egress.¹⁰ Also, a state sex offender registration statute that prohibits higher-risk registered sex offenders from living within a specified distance of a school or daycare center does not infringe on a constitutional right to intrastate travel.¹¹ A bona fide residence requirement of a state statute, which is appropriately defined and uniformly applied with respect to attendance in free public schools, does not violate the Equal Protection Clause of the 14th Amendment, and does not burden or penalize the constitutional right of interstate travel.¹² However, a state's restriction of its civil service preference to veterans who entered the armed forces while residing in the state violates the constitutionally protected right to travel.¹³

Practice Tip:

The "strict scrutiny" standard of constitutional review applies where the violated interest is a fundamental personal right or civil liberty, such as the right to interstate travel.¹⁴

The Supreme Court has stated that the right to travel abroad is a part of the "liberty" of which a citizen cannot be deprived without due process of law.¹⁵ However, the constitutional liberty to travel abroad is subject to limitations.¹⁶ Thus, freedom to travel abroad with a "letter of introduction" in the form of a passport issued by the sovereign is subordinate to national security and foreign policy considerations and is, as such, subject to reasonable governmental regulation, inasmuch as the freedom to travel outside the United States is distinguishable from the right to travel within the United States.¹⁷

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Attorney General of New York v. Soto-Lopez](#), 476 U.S. 898, 106 S. Ct. 2317, 90 L. Ed. 2d 899 (1986).
The right of a United States citizen to travel from one state to another and to take up residence in the state of his or her choice is protected by the Federal Constitution. [Jones v. Helms](#), 452 U.S. 412, 101 S. Ct. 2434, 69 L. Ed. 2d 118 (1981).
- 2 [Benning v. State](#), 161 Vt. 472, 641 A.2d 757 (1994) (a motorcycle headgear statute does not violate a state constitutional article guaranteeing the right of enjoying and defending liberty and pursuing and obtaining safety).
- 3 §§ 657, 658.
- 4 [U.S. v. Laub](#), 385 U.S. 475, 87 S. Ct. 574, 17 L. Ed. 2d 526 (1967).
Even though one may not have a constitutional right to be in a certain place, the government may not prohibit one from going there unless by means consonant with due process of law. [Cafeteria and Restaurant Workers Union, Local 473, AFL-CIO v. McElroy](#), 367 U.S. 886, 81 S. Ct. 1743, 6 L. Ed. 2d 1230 (1961).
As to freedom of travel or movement in public vehicles or places, see § 624.
- 5 [Attorney General of New York v. Soto-Lopez](#), 476 U.S. 898, 106 S. Ct. 2317, 90 L. Ed. 2d 899 (1986).
- 6 [Zobel v. Williams](#), 457 U.S. 55, 102 S. Ct. 2309, 72 L. Ed. 2d 672 (1982) (holding that the retrospective aspect of Alaska's dividend distribution program, favoring established residents over new residents, was constitutionally unacceptable).

- 7 [Jacobson v. Commonwealth of Massachusetts](#), 197 U.S. 11, 25 S. Ct. 358, 49 L. Ed. 643 (1905); [Booth v. People of State of Illinois](#), 184 U.S. 425, 22 S. Ct. 425, 46 L. Ed. 623 (1902); [Williams v. Fears](#), 179 U.S. 270, 21 S. Ct. 128, 45 L. Ed. 186 (1900) (also stating that the right to move from one place to another according to inclination is an attribute of personal liberty).
- 8 [Attorney General of New York v. Soto-Lopez](#), 476 U.S. 898, 106 S. Ct. 2317, 90 L. Ed. 2d 899 (1986).
- 9 [Hurtado v. U.S.](#), 410 U.S. 578, 93 S. Ct. 1157, 35 L. Ed. 2d 508 (1973).
- 10 [People of State of N. Y. v. O'Neill](#), 359 U.S. 1, 79 S. Ct. 564, 3 L. Ed. 2d 585 (1959).
- 11 [Weems v. Little Rock Police Dept.](#), 453 F.3d 1010 (8th Cir. 2006).
An ordinance prohibiting convicted sex offenders from knowingly entering any public park owned, operated, or maintained by town did not violate the fundamental right to intrastate travel under the Federal and State Constitutions; the right to enter a park was not a right of function which a sex offender would depend on to carry out daily life activities, and the ordinance was rationally related to the town's interest in preventing sex crimes. [Standley v. Town of Woodfin](#), 362 N.C. 328, 661 S.E.2d 728 (2008).
- 12 [Martinez v. Bynum](#), 461 U.S. 321, 103 S. Ct. 1838, 75 L. Ed. 2d 879, 10 Ed. Law Rep. 11 (1983).
- 13 [Attorney General of New York v. Soto-Lopez](#), 476 U.S. 898, 106 S. Ct. 2317, 90 L. Ed. 2d 899 (1986).
- 14 [Cummings v. X-Ray Associates of New Mexico, P.C.](#), 1996-NMSC-035, 121 N.M. 821, 918 P.2d 1321 (1996).
- 15 [Am. Jur. 2d, Passports § 13](#).
As to the right with respect to international travel, generally, see § 661.
- 16 [Zemel v. Rusk](#), 381 U.S. 1, 85 S. Ct. 1271, 14 L. Ed. 2d 179 (1965) (holding that the exercise, by the Secretary of State, of his or her authority to refuse to validate passports of United States citizens for travel to Cuba is constitutionally permissible); [Karpova v. Snow](#), 402 F. Supp. 2d 459 (S.D. N.Y. 2005), *aff'd*, 497 F.3d 262 (2d Cir. 2007).
As to the validity of passport restrictions or requirements, generally, see [Am. Jur. 2d, Passports §§ 11 to 16](#).
- 17 [Haig v. Agee](#), 453 U.S. 280, 101 S. Ct. 2766, 69 L. Ed. 2d 640 (1981) (holding that the President, by acting through the Secretary of State, has authority to revoke a passport on the ground that the holder's activities in foreign countries are causing or are likely to cause serious damage to the national security or foreign policy of the United States).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16A Am. Jur. 2d Constitutional Law § 624

American Jurisprudence, Second Edition | May 2021 Update

Constitutional Law

Barbara J. Van Arsdale, J.D.; James Buchwalter, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Lonnie E. Griffith, Jr., J.D.; Janice Holben, J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; Karen L. Schultz, J.D.; Jeffrey J. Shampo, J.D.; and Kimberly C. Simmons, J.D.

IX. Fundamental Constitutional Rights and Privileges

C. Particular Fundamental Constitutional Rights

2. Life, Liberty, and Pursuit of Happiness

b. Liberty Interest in Specific Matters

§ 624. Rights in public vehicles and places for purposes of liberty interest of Due Process Clause

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1069

A.L.R. Library

[Validity, construction, and application of loitering statutes and ordinances, 72 A.L.R.5th 1](#)

Under the constitutional guarantee of liberty one may, under normal conditions, move at his or her own inclination along the public highways or in public places, and while conducting himself or herself in an orderly and decent manner, neither interfering with nor disturbing another's rights, one will be protected, not only in his or her person, but in his or her safe conduct.¹ For example, the right of a citizen to drive on a public street with freedom from police interference, unless he or she is engaged in suspicious conduct associated in some manner with criminality, is a fundamental constitutional right.² However, the liberty of each individual in a public vehicle or public place is subject to reasonable limitations in relation to the rights of others.³

Statutes or ordinances regulating loitering,⁴ vagrancy,⁵ breach of the peace,⁶ or disorderly conduct⁷ in public places, challenged on due process grounds, have been sustained in some cases and invalidated in others, depending upon the language and scope

of the provisions.⁸ A person is free to live on the street if that person chooses to do so; a person may not be held against her will merely to improve her standard of living or because society may find it uncomfortable to see such people on the street.⁹ Curfew ordinances affecting juveniles and children have been held constitutional in some cases,¹⁰ although there is much authority to the contrary, and there is an increasing tendency to hold them unconstitutional.¹¹

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Pinkerton v. Verberg](#), 78 Mich. 573, 44 N.W. 579 (1889); [City of St. Louis v. Gloner](#), 210 Mo. 502, 109 S.W. 30 (1908) (loitering on the street).
- 2 [People v. Horton](#), 14 Cal. App. 3d 930, 92 Cal. Rptr. 666 (5th Dist. 1971).
- 3 [Public Utilities Commission of District of Columbia v. Pollak](#), 343 U.S. 451, 72 S. Ct. 813, 96 L. Ed. 1068 (1952).
- 4 [Bullock v. City of Dallas](#), 248 Ga. 164, 281 S.E.2d 613 (1981).
As to regulations regarding loitering, generally, see [Am. Jur. 2d, Highways, Streets, and Bridges](#) § 197.
As to statutes regulating loitering, generally, see [Am. Jur. 2d, Vagrancy and Related Offenses](#) §§ 3 to 11.
- 5 [Am. Jur. 2d, Vagrancy and Related Offenses](#) § 2.
- 6 [Am. Jur. 2d, Breach of Peace and Disorderly Conduct](#) § 14.
- 7 [Am. Jur. 2d, Breach of Peace and Disorderly Conduct](#) §§ 33, 34.
- 8 [State ex rel. De Concini v. Gatewood](#), 10 Ariz. App. 274, 458 P.2d 368 (1969); [Walker v. District of Columbia](#), 196 A.2d 92 (D.C. 1963); [People v. Merolla](#), 9 N.Y.2d 62, 211 N.Y.S.2d 155, 172 N.E.2d 541 (1961).
- 9 [Abney v. U. S.](#), 451 A.2d 78 (D.C. 1982); [In re Long](#), 237 Ill. App. 3d 105, 180 Ill. Dec. 182, 606 N.E.2d 1259 (2d Dist. 1992).
However, an ordinance prohibiting sleeping outdoors in a public place or in a motor vehicle parked in a public place is not facially overbroad, as the ordinance does not reach a substantial amount of constitutionally protected conduct. [Whiting v. Town of Westerly](#), 743 F. Supp. 97 (D.R.I. 1990), *aff'd*, 942 F.2d 18 (1st Cir. 1991).
- 10 [People in Interest of J.M.](#), 768 P.2d 219 (Colo. 1989); [City of Milwaukee v. K.F.](#), 145 Wis. 2d 24, 426 N.W.2d 329 (1988).
- 11 [McColleston v. City of Keene](#), 586 F. Supp. 1381 (D.N.H. 1984); [K.L.J. v. State](#), 581 So. 2d 920 (Fla. 1st DCA 1991); [City of Maquoketa v. Russell](#), 484 N.W.2d 179 (Iowa 1992); [Allen v. City of Bordentown](#), 216 N.J. Super. 557, 524 A.2d 478 (Law Div. 1987).
As to municipal curfew laws, generally, see [Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions](#) § 416.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16A Am. Jur. 2d Constitutional Law § 625

American Jurisprudence, Second Edition | May 2021 Update

Constitutional Law

Barbara J. Van Arsdale, J.D.; James Buchwalter, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Lonnie E. Griffith, Jr., J.D.; Janice Holben, J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; Karen L. Schultz, J.D.; Jeffrey J. Shampo, J.D.; and Kimberly C. Simmons, J.D.

IX. Fundamental Constitutional Rights and Privileges

C. Particular Fundamental Constitutional Rights

2. Life, Liberty, and Pursuit of Happiness

b. Liberty Interest in Specific Matters

§ 625. Health matters and regulations for purposes of liberty interest of Due Process Clause

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1116 to 1117(2)

A.L.R. Library

[Regulation of exposure of female, but not male, breasts, 67 A.L.R.5th 431](#)

[Prisoner's right to die or refuse medical treatment, 66 A.L.R.5th 111](#)

Reasonable governmental health regulations, such as a compulsory vaccination law to protect the population against the danger of smallpox¹ or the fluoridation of the public water supply,² do not violate personal due process liberty. Assuming that the constitution recognizes a liberty interest in avoiding unwanted administration of antipsychotic drugs, the substantive issue involves definition of that protected constitutional interest, as well as identification of the conditions under which competing state interests might outweigh it.³ There is no constitutionally protected right to indulge in the use of euphoric drugs.⁴

A state cannot constitutionally confine without more a nondangerous individual who is capable of surviving safely in freedom by himself or herself or with the help of willing and responsible family members or friends.⁵

A state judge's grant of a guardian's request for withholding of nutrition and hydration from an incapacitated patient did not violate the [U.S. Const. Amend. VIII](#); the patient had not been convicted of a crime, she was not being "detained" by the state at hospice, and neither the guardian nor the trial judge, being sued in his individual capacity, was a state actor.⁶

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Jacobson v. Commonwealth of Massachusetts](#), 197 U.S. 11, 25 S. Ct. 358, 49 L. Ed. 643 (1905).
As to compulsory vaccination, inoculation, and the like, generally, see [Am. Jur. 2d, Health](#) §§ 66 to 70.
- 2 [Kraus v. City of Cleveland](#), 55 Ohio Op. 6, 66 Ohio L. Abs. 417, 116 N.E.2d 779 (C.P. 1953), judgment aff'd, 55 Ohio Op. 36, 76 Ohio L. Abs. 214, 121 N.E.2d 311 (Ct. App. 8th Dist. Cuyahoga County 1954), judgment aff'd, 163 Ohio St. 559, 57 Ohio Op. 1, 127 N.E.2d 609 (1955).
As to the fluoridation of the public water supply, generally, see [Am. Jur. 2d, Waterworks and Water Companies](#) § 40.
- 3 [Mills v. Rogers](#), 457 U.S. 291, 102 S. Ct. 2442, 73 L. Ed. 2d 16 (1982).
A mentally ill person has a liberty interest under the Due Process Clause of the [U.S. Const. Amend. XIV](#) to refuse to be medicated with psychotropic substances; but the statute permitting a trial court to authorize the involuntary administration of psychotropic medication to a person receiving mental health treatment does not impermissibly burden this liberty interest, since the statute embodies and is narrowly tailored to address the state's significant parens patriae interest in providing for a person who, while suffering from a serious mental illness or development disability, lacks the capacity to make reasoned decisions concerning their needs for medication. [In re C.E.](#), 161 Ill. 2d 200, 204 Ill. Dec. 121, 641 N.E.2d 345 (1994).
- 4 [People v. Aguiar](#), 257 Cal. App. 2d 597, 65 Cal. Rptr. 171 (1st Dist. 1968).
- 5 [DeMarco v. Sadiker](#), 952 F. Supp. 134 (E.D. N.Y. 1996).
- 6 [Schiavo ex rel Schindler v. Schiavo](#), 358 F. Supp. 2d 1161 (M.D. Fla. 2005), aff'd, 403 F.3d 1289 (11th Cir. 2005).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16A Am. Jur. 2d Constitutional Law § 626

American Jurisprudence, Second Edition | May 2021 Update

Constitutional Law

Barbara J. Van Arsdale, J.D.; James Buchwalter, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Lonnie E. Griffith, Jr., J.D.; Janice Holben, J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; Karen L. Schultz, J.D.; Jeffrey J. Shampo, J.D.; and Kimberly C. Simmons, J.D.

IX. Fundamental Constitutional Rights and Privileges

C. Particular Fundamental Constitutional Rights

2. Life, Liberty, and Pursuit of Happiness

b. Liberty Interest in Specific Matters

§ 626. Rights of prisoners and parolees for purposes of liberty interest of Due Process Clause

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4820 to 4831, 4838

A.L.R. Library

[Prisoner's right to die or refuse medical treatment, 66 A.L.R.5th 111](#)

Prisoners generally have a "liberty" interest requiring a determination whether action taken by prison authorities violates due process. Thus, ruling that federal courts may consider the validity of procedures for depriving state prisoners of good-time credits, the Supreme Court has held that (1) the state having created the right to good-time credits and itself recognizing that its deprivation is a sanction authorized for major misconduct, the prisoners' interest has real substance and is sufficiently embraced within the 14th Amendment "liberty" to entitle them to those minimum procedures appropriate under the circumstances and required by the Due Process Clause to ensure that the state-created right is not arbitrarily abrogated, and (2) a person's liberty is equally protected by the Due Process Clause even when the liberty itself is a statutory creation of the state.¹ However, the Due Process Clause does not confer a liberty interest in freedom from state action taken within a prisoner's imposed sentence.² Likewise, if an inmate is not confined beyond the sentence imposed and the sentence is typically administered, the Due Process Clause of the 14th Fourteenth Amendment does not confer a liberty interest in freedom.³ State inmates have a liberty interest

protected by the 14th Amendment's Due Process Clause in avoiding assignment to a state's supermax prison, as such assignment imposes an atypical and significant hardship on an inmate in relation to the ordinary incidents of prison life.⁴ However, an inmate has no liberty interest protected by due process in his or her minimum custody status or other privileges.⁵ Those who are confined by the state, for whatever reason, are entitled under the Due Process Clause to food, clothing, medical care, and reasonable efforts to secure their personal safety; additionally, due process requires that the conditions and duration of a person's confinement bear some reasonable relation to the purposes of confinement.⁶ Yet, an individual who was not apprehended, being apprehended, or otherwise being taken into custody by police officers when he was shot did not have a constitutional right to medical care.⁷

A pretrial detainee's desire to be free from discomfort does not rise to the level of a fundamental liberty interest under the Due Process Clause of the [U.S. Const. Amend. V](#).⁸ In evaluating the constitutionality of conditions or restrictions of pretrial confinement that implicate only the protection against deprivation of liberty without due process of law, the proper inquiry is whether those conditions amount to punishment of the detainee.⁹

An inmate does not have constitutionally protected liberty interest in the possibility of parole or in a parole board's discretionary decisions.¹⁰ An inmate's liberty interest in parole, if it exists at all, is so insignificant that the inmate has no due process right to contest the validity of a reason given for denial of parole,¹¹ nor the right to a live hearing; rather, due process requires simply that the convicted person be given timely notice in advance of the parole panel's consideration of the matter and that such person be given an opportunity to submit any information that he or she feels may be relevant to the parole panel's decision.¹²

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Wolff v. McDonnell](#), 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974).
As to the rights of prisoners regarding their personal appearance and hair length, see [§ 620](#).
- 2 [In re Lain](#), 179 Wash. 2d 1, 315 P.3d 455 (2013).
- 3 [Stephens v. Canino](#), 71 F. Supp. 3d 510 (E.D. Pa. 2014).
- 4 [Wilkinson v. Austin](#), 545 U.S. 209, 125 S. Ct. 2384, 162 L. Ed. 2d 174 (2005) (noting that almost all human contact was prohibited for an inmate placed at the facility, the duration of the assignment was indefinite, and the assignment disqualified as an otherwise eligible inmate for parole consideration).
As to transfer to other penal institutions, generally, see [Am. Jur. 2d, Penal and Correctional Institutions §§ 142 to 149](#).
- 5 [David v. Hill](#), 401 F. Supp. 2d 749 (S.D. Tex. 2005).
- 6 [Nwaokocha v. Sadowski](#), 369 F. Supp. 2d 362 (E.D. N.Y. 2005); [Williams v. Nelson](#), 398 F. Supp. 2d 977 (W.D. Wis. 2005).
- 7 [Carr v. Tatangelo](#), 338 F.3d 1259 (11th Cir. 2003), as amended on other grounds, (Sept. 29, 2003).
- 8 [Bell v. Wolfish](#), 441 U.S. 520, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979).
- 9 [Bell v. Wolfish](#), 441 U.S. 520, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979) (holding that a federal custodial facility's "double-bunking" practice, body-cavity search practice, ban against receipt of books unless mailed directly from publishers, ban against receipt of packages of food or personal items from outside the facility, and room search rule, were not violative of constitutional rights of pretrial detainees, that is, persons who have been charged with a crime but who have not yet been tried on the charge).
- 10 [Adams v. Agniel](#), 405 F.3d 643 (8th Cir. 2005); [Robinson v. Fahey](#), 366 F. Supp. 2d 368 (E.D. Va. 2005), *aff'd*, 174 Fed. Appx. 757 (4th Cir. 2006); [In re Lain](#), 179 Wash. 2d 1, 315 P.3d 455 (2013).
- 11 [Robinson v. Fahey](#), 366 F. Supp. 2d 368 (E.D. Va. 2005), *aff'd*, 174 Fed. Appx. 757 (4th Cir. 2006).
- 12 *Ex parte Campbell*, 267 S.W.3d 916 (Tex. Crim. App. 2008).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16A Am. Jur. 2d Constitutional Law § 627

American Jurisprudence, Second Edition | May 2021 Update

Constitutional Law

Barbara J. Van Arsdale, J.D.; James Buchwalter, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Lonnie E. Griffith, Jr., J.D.; Janice Holben, J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; Karen L. Schultz, J.D.; Jeffrey J. Shampo, J.D.; and Kimberly C. Simmons, J.D.

IX. Fundamental Constitutional Rights and Privileges

C. Particular Fundamental Constitutional Rights

2. Life, Liberty, and Pursuit of Happiness

b. Liberty Interest in Specific Matters

§ 627. Miscellaneous matters for purposes of liberty interest of Due Process Clause

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1079, 4267, 4475, 4480

The question whether constitutionally guaranteed "liberty" has been invaded by government action has been presented in a miscellany of situations in addition to those discussed in preceding sections. When an alien is ordered deported, the liberty of that individual is at stake and he or she accordingly is entitled to procedural due process.¹

A state criminal statute prohibiting the use of the flag of the United States for purposes of mere advertisement did not infringe any right of personal liberty as guaranteed in the Due Process Clause of the 14th Amendment.² However, the state may not compel any person to recite the Pledge of Allegiance to the flag or display the state's slogan.³

The retroactive application of a state workers' compensation statute does not deprive employees of liberty without due process.⁴

A motel owner-operator is not deprived of liberty or property under the [U.S. Const. Amend. I](#), by the loss of its "right" to select its guests free from governmental regulation, by the provisions of the Civil Rights Act of 1964, which forbids discrimination or segregation on the ground of race, color, religion, or national origin in various places of accommodation affecting commerce.⁵

The private due process interests involved in a conservatorship proceeding are the potential loss of liberty and stigma resulting from the disabilities imposed on a conservatee.⁶

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Yesil v. Reno](#), 958 F. Supp. 828 (S.D. N.Y. 1997) (disapproved of on other grounds by, [Ozoanya v. Reno](#), 979 F. Supp. 447 (W.D. La. 1997)).
- 2 [Halter v. State of Nebraska](#), 205 U.S. 34, 27 S. Ct. 419, 51 L. Ed. 696 (1907) (affirming the defendant's conviction for having used the flag upon a bottle of beer).
As to the constitutionality of statutes, ordinances, or administrative provisions prohibiting defiance, disrespect, mutilation, or misuse of the American flag, generally, see [Am. Jur. 2d, Flag §§ 2 to 4](#).
- 3 [Sherman v. Community Consol. School Dist. 21 of Wheeling Tp.](#), 980 F.2d 437, 79 Ed. Law Rep. 396 (7th Cir. 1992).
- 4 [Middleton v. Texas Power & Light Co.](#), 249 U.S. 152, 39 S. Ct. 227, 63 L. Ed. 527 (1919).
- 5 [Heart of Atlanta Motel, Inc. v. U. S.](#), 379 U.S. 241, 85 S. Ct. 348, 13 L. Ed. 2d 258 (1964).
- 6 [In re Conservatorship of Christopher A.](#), 139 Cal. App. 4th 604, 43 Cal. Rptr. 3d 427 (4th Dist. 2006).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.